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# SOCIAL RESEARCH

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Quarterly of  
Political and Social  
Science

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VOLUME SIXTEEN · NUMBER FOUR

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# Social Research

AN INTERNATIONAL QUARTERLY  
OF POLITICAL AND SOCIAL SCIENCE

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VOLUME SIXTEEN · DECEMBER 1949 · NUMBER FOUR

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## FOUR YEARS OF THE UNITED NATIONS

BY ERICH HULA

THE attempt to review and appraise the work of the United Nations on the basis of its four-year record is admittedly a bold and problematic undertaking. Such short experience does not seem to warrant even merely tentative conclusions. And yet, the attempt may actually be less presumptuous than it appears at first sight.

The United Nations is, after all, by no means an entirely novel experiment in building an international political organization of projected universal scope. To be sure, it was part of the propaganda employed in selling, or rather overselling, the new organization to the American public, to present the United Nations as a hitherto untested remedy for the evil of war. Inasmuch as references to the defunct League of Nations could not altogether be avoided, they were made only in order to illustrate the constitutional superiority of the new over the old organization.<sup>1</sup> Actually, the United Nations does differ from its predecessor in some, not wholly irrelevant, respects. These differences, moreover, are not confined to the institutional and functional features of the two organizations, but extend to their moral, ideological, and political settings as well. Nevertheless, the United Nations and the League of Nations are, fundamentally, variants of one and the same organizational type—the confederate system. Both were conceived by their founders as international bodies composed of sovereign member states, yet charged with the task of upholding the authority of the community of nations as a whole. The basic identity of structure and purpose has made for a continuity of issues and problems that

<sup>1</sup> See Leland M. Goodrich, "From League of Nations to United Nations," in *International Organization*, vol. 1 (February 1947) pp. 3-4.

is already very striking and is bound to become ever more so. Their fundamental unity of structure, purpose, and problems makes it possible—indeed, even imperative—to analyze and weigh the short record of Lake Success and Flushing Meadow in the light of the somewhat longer record of Geneva.

The limits of experience do not present the greatest stumbling block in the way of assessing the accomplishments and failures of the United Nations. A record short in terms of years is not necessarily deficient in terms of work actually undertaken. The Charter assigned to the United Nations and its specialized agencies tasks of a variety and scope unprecedented in the history of international organization. And even the severest critic of the United Nations could not possibly maintain that it has not been eager to make the fullest use of its powers. The formidable number of items on the agenda of each year's General Assembly and the length of its annual sessions clearly testify to a work load that very definitely puts the activities of the League of Nations in the shade. This quantitative difference is no less impressively indicated by the respective staff figures for the League of Nations Secretariat and that of the United Nations. Whereas the maximum number of staff members employed in the former was approximately 800, there are today some 3,000 staff members employed in the latter, not counting the civil service of the specialized agencies.<sup>2</sup> Thus, instead of being frustrated by lack of material, the student of the United Nations finds himself overwhelmed by its abundance.

It would be impossible to evaluate in any one paper all the activities of the United Nations with anything close to accuracy. This holds true especially for the functions assigned to such organs as the Economic and Social Council and the Trusteeship Council. To appraise their actual accomplishments would require not only a careful scrutiny of the whole host of resolutions passed by those bodies and the General Assembly. We

<sup>2</sup> See A. Pelt, *The League of Nations Compared with the United Nations*, lecture delivered at Lake Success, April 4, 1949 (mimeographed 49-10351) p. 7.

would also have to find out to what extent the member governments have taken practical steps to implement the several decisions.<sup>3</sup>

It is not only necessary, but justifiable as well, to limit the following stocktaking to the record of the United Nations as an agency for maintaining international peace and security. Maintenance of international peace and security is the purpose that stands highest in the hierarchy of aims which the United Nations is designed to fulfill. Its success is therefore primarily determined by its actions and failures to act in the political field proper. In fact, all the other activities of the United Nations being of an essentially auxiliary character, they too must be measured in terms of their respective contribution to peace and security.

## I

By far the greatest expectations aroused in us by the establishment of the United Nations were based on its alleged merits as a security organization. Chapter VII of the Charter was considered to be its very core. The technical features of the collective security system, incorporated in the Chapter, were supposed to assure the effectiveness of the new peace machinery to a much higher degree than the League of Nations Covenant had done. The powerful protection which the system was presumed to offer the smaller members of the organization was to reconcile them to its hierarchical structure and its authoritarian spirit. Actually, however, not even the legal features of the Charter's security system justified such fervent hopes, quite apart from the doubtful validity of its political assumptions.

According to the concept of collective security, the national security of the individual state is a matter of concern to the community of nations as a whole. A threat to the security of one

<sup>3</sup> Recent discussions in the Economic and Social Council seem to indicate that the record of implementation is poor. See *United Nations Bulletin*, vol. 7 (August 15, 1949) pp. 174 ff.

is a threat to the security of all. The other nations are not only entitled, but obligated, to come to the help of the state threatened. In exchange for receiving protection from the international community, the individual state is expected to give up, or rather accept limitations of, such important attributes of its sovereignty as the right to arm, to form alliances, and to wage war. Collective enforcement of peace and security is to replace individual self-help.

The close interdependence between the obligation of the community and the undertakings of its members is obvious. In fact, it operates as a vicious circle in which any system of collective security is bound to be caught. No nation, including the most peaceable one, can afford or be willing to renounce, without reservation, the paraphernalia of power and the right to employ them, unless it can be virtually certain of effective collective protection. But the confederate structure of the system of collective security precludes the only true guarantee of such efficacy, a supranational authority superior to any and all of the national governments in terms of political, moral, military, and economic strength. The advocates of world government, therefore, are no doubt right in maintaining that the problem of collective security is insoluble within the framework of a confederate system. They are wrong merely in assuming that a world government proper would be attainable or workable.

The short history of the United Nations security system is a melancholy illustration of this vicious circle. It is the more discouraging as it is, *mutatis mutandis*, a repetition of the League of Nations experience, the main difference being the greater rapidity with which the disintegration of the San Francisco system has been consummated. As a matter of fact, it would be more appropriate to say that it has not come into existence.

What are the legal features and political assumptions of that system, and what are the causes and symptoms of its disintegration?

Universal membership is the ultimate goal of the United

Nations. But this was never meant to imply that its coercive powers were to be universally applicable. On the contrary, as a security organization proper, the United Nations to all intents and purposes has had from the very beginning an extremely narrow scope. In view of the right of the permanent members of the Security Council to veto any enforcement measure—a right upon which we insist, even today, as strongly as the Russians do—the organization could not, even in purely legal terms, be expected ever to be in a position to institute enforcement proceedings against any of the great powers. Neither can we count on its support against the Russians, nor can the Russians count on it against us. What is worse yet, none of the smaller powers is entitled to regard collective protection as certain or even likely, if and when its security should be threatened by a great power.

At best it could be hoped that the legal security mechanism of the United Nations might operate in cases of conflict between minor powers. But the veto applies in these cases as well, though its subjective aspect is somewhat different. By exercising it, a permanent member of the Security Council would not stave off collective action against itself, but would refuse to participate in such action against another United Nations Member, thus blocking enforcement procedures against the latter. And it is quite likely to do so if its supposed national interests suggest this course.

To emphasize the restrictive character of the veto is not to imply that the political problems involved in collective security could and should be solved by abolishing the veto in its application to enforcement measures. The veto is a symptom, not the root, of the difficulties that are inherent in the political realities. To remove the legal obstacle which precludes enforcement action against a permanent member of the Security Council would mean to endow the organization with a merely fictitious right, unless it is ready to launch what would be essentially a global war, the very catastrophe which the organization is

intended to prevent. Nor would it be any more useful to abolish the veto as a means of blocking collective action against a medium-sized or small Member of the organization. If one of the great powers, and especially if one of the superpowers should consider it, rightly or wrongly, necessary for political reasons to identify itself with the nation against which preventive or repressive collective action is to be taken, such action would again ultimately mean global war. The veto is nothing but the legal form in which a permanent member of the Security Council states what it holds to be the zone of its vital interests on which it is not ready to compromise. Without the veto, it could be legally outvoted, but not actually brought into line.

Given the limited scope of the United Nations security system and the uncertainties of its operation within this scope, the fact that the technique of the enforcement measures provided for in the Charter is an improvement over that of the Covenant has meant very little in a practical way. Moreover, the most important of those improvements has not materialized. As it has been so aptly put, the Security Council "has had its teething troubles, but it has not yet acquired its teeth."<sup>4</sup> According to Article 43 of the Charter, there was to be placed at the disposal of the Security Council a military establishment composed of national contingents. However, owing to the inability of the Big Five to come to an agreement on the character and size of those armed forces, diplomatic and economic measures are still the only coercive powers of the Security Council. The formal authorization to use them, even for merely preventive purposes, is all that is left of the much-praised advance of Chapter VII of the Charter beyond Article 16 of the Covenant.

That the enforcement machinery has not yet been completed weighs in the total balance less heavily than the fact that the political assumptions upon which the security system of the United Nations has been based have failed to come true. The

<sup>4</sup> B. A. Wortley, "The Veto and the Security Provisions of the Charter," in *British Year Book of International Law*, 1946, p. 107.

former is rather a mere indication of the latter. The security structure has remained unfinished, because its foundation has fallen apart.

The very word "veto" has today a derogatory connotation. But the actual and potential abuse of the veto privilege should not make us forget that the veto is the reverse of a positive idea of long standing, adapted to the parliamentary procedures of current international politics. The idea that the maintenance of international peace and security depends, primarily and ultimately, upon the existence of what, in the predemocratic age, was called the concert of the leading powers, has not become any less valid because the stubborn facts of world politics displease our tender liberal hearts. Whether we like it or not, far from being a substitute for the concert of powers, the system of collective security has a reasonable chance to work only within a hegemonic framework. The fathers of the United Nations were therefore wise in recognizing the unanimity of the foremost powers as a basic prerequisite for the new security system.

The chances for successful operation of collective security are slim enough when the interests of great powers that otherwise entertain the most cordial relations with one another do not run parallel with regard to enforcement measures called for by the alleged disturbance of peace by a third minor state. The Indonesian case with its alignment in the Security Council of colonial versus anticolonial powers, instead of the usual alignment of east versus west, was a typical illustration of such a situation. That what the French veto defeated was not an enforcement measure proper only corroborates the problematic value of the collective security system even under comparatively auspicious conditions.<sup>5</sup>

But practically speaking, the system is unworkable if the great powers are divided by a deep and permanent rift. To be sure, even within the context of a cold war there might arise situations

<sup>5</sup> See Raymond Dennett, "Politics in the Security Council," in *International Organization*, vol. 3 (August 1949) pp. 430 ff.

in which its protagonists are, for one reason or another, willing and able to pursue common enforcement policies. In the Palestinian case, the Security Council went so far as to base its final cease-fire order explicitly upon Chapter VII of the Charter, and to declare that failure to comply with the order would require its immediate consideration with a view to further action. It is an open question, however, whether the Security Council could have ever agreed on actual enforcement proceedings, if subsequent developments in Palestine had called for them. As the record stands, the case testifies to the value of the United Nations as a conciliatory agency rather than as an international policeman. Be that as it may, the case typical of the problem of enforcing peace and security by the collective action of an organization torn by a cold war among its leading members was and still is the Greek case.

The breakdown of the security system of Geneva was dramatically signalized by the failure of the League of Nations in the Sino-Japanese and Italo-Ethiopian conflicts to impose any sanctions in the former case and effective sanctions in the latter. The disintegration of the security system of Lake Success has not followed from any spectacular enforcement experiment, not even one tried on a small nation. But, even so, the symptoms are no less definite and clear. They can be summarized as a return, on almost all sides, to the idea and devices of self-help.

The tempo of the return to international normalcy, as it were, was in each case determined by the length of time for which the belief in collective protection as a working substitute for individual self-help endured. As a matter of fact, the Russians never lost themselves in the pleasant maze of hopes and illusions that nurtured organizational pacifism in the liberal democracies of the west. Being extremely distrustful of the security value, for a socialist state, of international institutions in a world dominated, according to them, by monopoly capitalism, they saw in the establishment of the United Nations no valid reason for discontinuing the game of power politics pure and simple.

This is not to imply that Russian policy can be explained in terms of supposedly realistic security considerations alone. The very dynamism of the communist idea would refute such a simple interpretation of Russia's aggressive actions. It is only to suggest that the obsession about security, deeply rooted in her history, is one of the factors that account for her actual policies.<sup>6</sup> Its force may be the more considerable since Marxist-Leninist doctrine holds that war, international as well as domestic, is the world's inescapable fate, so long as capitalism is working disruption. Unfortunately, wherever there prevails the fatalistic belief in the unavoidable clash of arms, be it founded on religious or scientific conceptions, defensive and offensive motives and actions merge all too easily, as has been amply borne out by history.

Security has become also an American obsession, ever since we fully realized that the political and technological developments of recent years have deprived us of the benefits of an isolated position. Contrary to the Russians, however, in our quest for safety in a shrunken world, we turned to the idea and the contrivances of collective security. True, we hoped to gain our new security at a cheap price, and some of the most important provisions of the Charter, as well as certain omissions in it, all of them tending to emphasize the powers of the Member states over against the authority of the United Nations Organization as a whole, are due to American initiative taken for the sake of American sovereignty.<sup>7</sup> But we were inclined to attribute to the world confederacy a very high security value, because our long liberal tradition had made us prone to believe in the triad of Wilsonian internationalism: the fundamental harmony of divergent opinions and interests, the potency and justness of

<sup>6</sup> See John N. Hazard, "The Soviet Union and the United Nations," in *Yale Law Journal*, vol. 55 (August 1946) p. 1018.

<sup>7</sup> See Clyde Eagleton, "The United Nations: Aims and Structure," in *Yale Law Journal*, vol. 55 (August 1946) pp. 974 ff., and Leo Gross, "The Charter of the United Nations and the Lodge Reservations," in *American Journal of International Law*, vol. 41 (July 1947) pp. 531 ff.

public opinion, and the effectiveness of rational procedures in settling disputes.

Admittedly, our basically optimistic philosophy has never induced us to neglect completely our actual and potential instruments of national power. The atomic bomb is, after all, hardly a typical expression of the Wilsonian faith. But the pace of our rearmament began to quicken only with the growing realization of the deficiencies of the United Nations security system. The degree which our disillusionment has reached today is indicated by the fact that our military planning has caught up with Russian policy in completely disregarding the United Nations as a security factor. In this atmosphere of absolute lack of international confidence, proposals for the regulation of conventional and atomic weapons are, on the part of all powers, likely to be propagandistic gestures rather than serious efforts to arrive at agreements.

Another phase and symptom of the disintegration of the world security system has been the formation of political and military alliances. This trend revealed itself first in the east by a vast network of bilateral treaties between Russia and her satellites as well as between the satellites themselves. The western world soon followed suit with multilateral security agreements. The pattern was set by the Inter-American Treaty of Mutual Assistance, signed at Rio de Janeiro in 1947. Its counterpart in western Europe is the Treaty of Brussels concluded in 1948. The development finally culminated this year in the North Atlantic Treaty and its military implementation.

By far the most momentous of those particular political and military understandings is the Atlantic Pact. It also demonstrates more clearly than any other how far, in spite of ourselves, we have moved away in the brief span of four years from the ideas of Dumbarton Oaks and San Francisco. To be sure, the Pact is based upon and formulated in strict accordance with Article 51 of the Charter, which recognizes the right of individual and collective self-defense. To that extent it can no doubt

correctly be called an implementation of a Charter provision. But this does not alter the fact that the Pact is based upon political and legal conceptions that are fundamentally different from those underlying the Charter.

Wilson conceived of the League of Nations as the very negation of the European system of alliances and balance of power, in his opinion one of the main causes of the ever-recurring wars on the Continent. Nor did his heirs who were to build the United Nations hold these devices in any higher esteem. The structure they planned for it and the stress they laid on the paramountcy of the world organization to any regional arrangements were a clear rejection of the allegedly immoral and outdated notions and techniques. It is all the more indicative, therefore, that American statesmen became the main architects of the Atlantic Pact which is, whatever we choose to call it, an alliance based on the balance of power idea.<sup>8</sup>

It signifies that the nation which believed in the efficacy of collective security with almost religious fervor has reluctantly come to the conclusion that the very objective of the system, to check in advance any potential aggression by assembling at least equal or possibly superior forces against it, will be better achieved by the diplomatic methods of olden times. Indeed, it is not entirely unjustifiable to presume that the very concreteness of the system of alliances may well render it a more effective means of assuring peace than the abstract system of collective security with its "twilight zone," where, to quote Mr. Hamilton Fish Armstrong, "one side assumes that collective security exists and the other counts on taking advantage of the fact that it does not."<sup>9</sup> Therein lies our hope that the disintegration of the United Nations security system does not necessarily mean that the cause of peace is lost as well.

<sup>8</sup> The question whether the North Atlantic Pact is a military alliance proper played some role in the Senate discussions on the Pact. See *North Atlantic Treaty, Hearings before the Committee on Foreign Relations, U. S. Senate, 81st Congress, 1st Session (Washington 1949) Part I, pp. 143 ff.*

<sup>9</sup> Armstrong, "Coalition for Peace," in *Foreign Affairs*, vol. 27 (October 1948) p. 13.

No less a discrepancy exists between the legal conceptions that underlie the Charter, on the one hand, and the Atlantic Pact, on the other. In trying to prove to ourselves and others the rightness of our novel policy of alliances, we have recently tended to assign to Article 51, on which the Atlantic Pact is based, a central position in the system of the Charter. Nothing could be more ominous than this attempt to interpret Article 51 as expressing the very essence of the United Nations constitution. The actual position and function of Article 51 in the Charter render it very close to the emergency provisions in a national constitution which authorize, under certain conditions and within more or less clearly defined limits, the suspension of the constitution. In this sense, Article 51 of the Charter might be compared, for example, with the ill-famed Article 48 of the ill-fated Constitution of Weimar.

In accordance with the idea of collective security, the Charter stipulates a general prohibition of war as a means of individual self-help. Any lawful use of force is, under the principal terms of the Charter, the monopoly of the United Nations Organization acting through its central agency, the Security Council. Article 51 establishes the exception, the right of the individual Member states to wage defensive war. True, it also defines the only conditions and limits under and within which the exception may lawfully be considered to apply. But by leaving the previous determination whether a state may in a concrete case resort to self-defense to the discretion of the individual state in question, Article 51, to all practical intents and purposes, restores the right to war to the position it held in modern international law prior to the establishment of an organized international society.

In view of the likelihood of a deadlock in the Security Council in case of an international crisis, which would block collective protection by the organization of the victim of an armed attack, Article 51 is undoubtedly a reservation that no Member of the United Nations can reasonably be expected to renounce. But to shift the emphasis in interpreting and applying the Charter

from the provisions that constitute the very core of the system of collective security to the provision which envisages its suspension, and to speak at the same time of implementation of the Charter, is a not very profitable attempt to deceive ourselves and others about the bankruptcy of the political and legal system whose establishment was the primary purpose of the Charter.<sup>10</sup>

## II

What are the lessons to be drawn from this disheartening record? The question poses the same basic problems that faced the Members of the League of Nations in 1936 when the failure of its first, and last, sanctions experiment caused them to explore the conclusions to be inferred from that failure. Nor are the types of answers given to the question then and now very different. They recommend either the strengthening of the respective organizations, or adaptation of their methods and procedures to the political realities.<sup>11</sup>

There is no need to comment on the organizational approach to the problem after our lengthy analysis of the United Nations security system. A revised Charter could devise on paper new and broadened legal competencies, but it could not create a political entity willing and able to exercise and enforce them. Moreover, what would have been very sensible from a political point of view between 1936 and 1938 would make no sense and serve no purpose in 1949. The Members of the League were shortly afterward to be the victims of aggression by states outside the League. To strengthen the League would have meant virtually to form, by a free act of will, an alliance that was a few years later imposed on them by their common enemies. It is to Russia's

<sup>10</sup> Hans Kelsen, "Collective Security and Collective Self-Defense under the Charter of the United Nations," in *American Journal of International Law*, vol. 42 (October 1948), pp. 795-96. See also Kelsen, "The Atlantic Pact and the United Nations Charter," in *New Leader*, June 4, 1949, p. 9.

<sup>11</sup> See "Documents relating to the Question of the Application of the Principles of the Covenant," in League of Nations, *Official Journal*, Special Supplement, No. 154 (Geneva 1936).

lasting credit that, foreseeing this contingency, she proposed reforms of the League which, if adopted, would in the form of a strengthened Covenant have realized a defensive alliance.<sup>12</sup> The United Nations of today has no common foes, but is split within itself into potentially hostile camps of another world war.

There remains, therefore, only the other alternative, namely, to adapt the methods and procedures of the United Nations to the political realities. This is by no means intended to suggest a policy of passive acquiescence in those explosive realities, and even less a policy based on the belief in the inevitability of an American-Russian war. The proposition suggests resignation only to the unalterable fact that the problems and issues of international politics are not amenable to any novel devices, so long as the structure of international society remains what it is today. But apart from that, it is founded upon the positive and perhaps all too optimistic assumption that the time-honored diplomatic methods of persuasion and negotiation can still be made to contribute to the pacification of the world. If this assumption is correct, at least within those rather narrow limits within which it can reasonably be expected to apply, the chances of the United Nations as a *pacificator orbis terrarum* will be the better, the more it follows diplomatic rather than governmental patterns.<sup>13</sup>

The annual report on the work of the United Nations Organization which Mr. Trygve Lie submitted to the General Assembly this fall points very clearly in the direction of our proposition.<sup>14</sup> After stating that "in the past a somewhat misleading emphasis has sometimes been placed on the enforcement functions of the Security Council," the Secretary-General exhorts the members to concentrate their future efforts on practicing and developing

<sup>12</sup> *Ibid.*, pp. 10-11.

<sup>13</sup> Hans J. Morgenthau, "Diplomacy," in *Yale Law Journal*, vol. 55 (August 1946) pp. 1067 ff., and *Politics Among Nations: The Struggle for Power and Peace* (New York 1948), especially pp. 419 ff. The latter is a brilliant defense of the ideas and techniques of old diplomacy.

<sup>14</sup> United Nations, *Annual Report of the Secretary-General on the Work of the Organization, July 1, 1948-June 30, 1949*, General Assembly Official Records, Fourth Session, Supplement No. 1 (A/930) (Lake Success 1949) pp. ix ff.

the instruments of Chapter VI of the Charter under which the Security Council has powers of recommendation only. Mr. Lie finally proceeds, in diplomatic language, to enlighten the great powers on the value of diplomacy as a means of making the United Nations a going concern.

In his desire to open up new vistas of hope, Mr. Lie somewhat overstates the successes of the United Nations as a mediatory and conciliatory body. To gauge the actual contribution of the pacific efforts of the United Nations to the positive results achieved in such cases as those of Syria-Lebanon, Iran, Egypt, Palestine, Indonesia, and Kashmir would require a detailed study of each of them in political as well as legal terms. But this qualification is not intended to detract from the credit due the United Nations in this field. The record compares not altogether unfavorably with that of the League of Nations, especially in view of the fact that throughout the twenties the organization of Geneva was an exclusive club of liberal democracies. And it is very definitely better than our overemphasis on the frustrating effect of the Russian veto would lead us to expect. In point of fact, as far as political disputes proper are concerned, the Russian veto has had a decisive negative effect only in the Greek question.

The good record of the United Nations is the more remarkable because the legal provisions of Chapter VI of the Charter would have easily lent themselves to efforts at paralyzing the Security Council for good. What has actually happened is that the Security Council, in dealing with the political disputes, has developed a body of rules, of customary law, procedural and substantive, that tends to strengthen considerably its legal authority as a pacific agency. To be sure, this authority will be of no practical avail whenever a dispute is engineered with the connivance of, if not directly instigated by, one of the great powers, as is illustrated by the Greek case. But the significance of this development in regard to disputes on the periphery, as it were, of international politics is therefore no less great.

It would hardly be justifiable to ascribe to any of the great powers, or even to the minor ones, a consistent policy in this process of constitutional growth by usage of either Jeffersonian strict or Hamiltonian loose construction. National interests prevail in international politics over considerations of consistency as surely as party interests do in national politics. The one and the same state, or even representative of state, may in one case urge the members of the Security Council to stick to the text of the Charter, and in the other, to apply logic and common sense. All that can safely be said and presumed to hold valid for the future as well is the following: Russia, forming with her satellites a permanent minority bloc, has shown and will continue to show a much greater reluctance to agree to procedures and decisions that seem to touch upon the basic structure of the United Nations than is displayed by the members of the permanent majority bloc. Four of Russia's forty-one vetoes were directed at preventing the strengthening of the General Assembly over against the Security Council, the citadel of Soviet voting power in the United Nations.

### III

It is hardly surprising that the good record of the United Nations as a mediatory and conciliatory body includes no achievements in the cold war between the United States and Soviet Russia. To think and speak of the United Nations as if it were a political entity is a fallacy, though the United Nations does have a legal personality. The name signifies a political relationship, not a substance, and the character of the relationship depends primarily upon the attitude of its leading Members toward one another. It would therefore not be reasonable to assume that the organization could have prevented or halted the cold war. It can, on the other hand, point to some resolutions and actions, especially in relation to the Berlin issue, that were due to the initiative of the minor powers, and may even have exerted some mitigating influence.

But one may wonder why, in the total balance of the cold war, the United Nations has heightened rather than lessened the international tension. This poses the question whether and to what extent the specific procedures practiced by the United Nations might have been conducive to that deplorable effect. Since the United States has played the decisive role in determining, shaping, and employing those methods, it poses also the question of our own responsibility for that unfortunate result.

The United Nations has gone to extremes in trying to replace secret diplomatic negotiation by public discussion and parliamentary procedures based upon the majority principle. It is the most radical attempt made thus far to apply to international politics the methods of domestic democratic politics. Measured in terms of this experiment, the League of Nations looks like the incarnation of old-time diplomacy. The unanimity principle prevailing in both Assembly and Council, the League Members felt compelled to come to an agreement before they proceeded to vote. Secret negotiation preceded and shaped the public discussion, at least in the Council. To put it in Paul-Henri Spaak's revealing words: ". . . the atmosphere of Geneva was very different from that now at Lake Success. It was more prearranged. There were some public debates from time to time, but I do not think I am betraying any secrets or saying anything unpleasant when I say that the public debate, in which the opposing theses were presented, were quite carefully prepared in the corridors, and that in reality everyone there was playing a role which he had learned in advance. When anyone deviated from the role which had been written by the authors, he was immediately considered to be a very bad character."<sup>15</sup> Public discussion and voting thus served only to underline and express a diplomatic agreement.

Since the unanimity principle of long standing still prevails

<sup>15</sup> Spaak, "The Role of the General Assembly," in *International Conciliation* (November 1948) p. 612.

among the permanent members of the Security Council, one should have expected that voting in the Security Council would more or less regularly be prearranged by negotiations among them. Actually, no previous consultation approaching a serious effort to reach agreement seems ever to have taken place. Certainly there are no indications that the speeches of Mr. Austin and Mr. Gromyko or Mr. Malik have been the product of cooperative efforts in the corridors.<sup>16</sup>

It would be naive to suggest that the methods of Geneva might in all cases have positive results at Lake Success as well. The point I am driving at is, rather, that in international politics, and especially in dealings among great powers, parliamentary proceedings cannot replace diplomacy proper, but depend for their part upon the successful operation of diplomacy. If diplomatic agreement proves to be impossible, outvoting the recalcitrant state, whose cooperation is probably necessary for carrying out a recommendation of the Security Council or General Assembly, serves no practical purpose with regard to the matter at hand. Its only effect is to deepen the rift between the powers concerned, the avoidance of which—if it can be avoided at not too high a price—is the main function of the art of diplomacy.

Instead of dealing with the individual cases as they arise in the councils of the United Nations exclusively with a view to our long-range interests, we, as a power certain of majority support, have often succumbed to the temptation to score parliamentary triumphs, expressed in what are, in terms of international power, imaginary figures. Public discussion and voting are, on all sides, no longer regarded as procedures serving primarily the integration of divergent opinions and interests; they are, on the contrary, in danger of degenerating into weapons of the ideological and political cold war.

The adoption by the Charter of the majority principle, side

<sup>16</sup> Only a short time ago the Big Five decided to set up machinery for consultation prior to voting, probably in compliance with a suggestion from the Secretary-General in the annual report mentioned above. See *New York Times*, November 1, 1949.

by side with the principle of concurrent majority applying to the permanent members of the Security Council, has charged the United Nations atmosphere with an explosive constitutional issue that is apt to intensify the cold war. "The Nature of the Union" could very well serve as the title of quite a few chapters in the history of the United Nations.

The constitutional controversy over the nature of the union centers on the veto issue, though that is not the only one to fall under this heading. Speaking precisely, it is a dispute over the scope and exercise of the veto rather than over its existence and legitimacy.<sup>17</sup> For we are as little ready today to subject our foreign or domestic policy to majority decisions of the United Nations, as we were at the time of Dumbarton Oaks, Yalta, and San Francisco. Commenting upon the veto in the Senate discussion on the Charter in 1945, Mr. Vandenberg said: "It is our defense against what I venture to believe would be bitterly condemned in many quarters as our 'involuntary servitude' if our veto power did not exist. It is the complete answer to any rational fears that we may be subordinating our destiny to alien commands. . . . It guarantees our perpetuated independence of international dictation."<sup>18</sup> In the meantime we have, of course, learned from Russia's two vetoes in the Czechoslovakian case that the veto can also be abused to facilitate the imposition upon a free nation of "involuntary servitude." But we still neither have any reason, nor have we declared any intention, to forgo the veto as a protection of what we rightly consider to be our vital interests. Nor do we want any other of the great powers to renounce the privilege altogether. If the limitations upon the veto which we have proposed were to be adopted, the flag, to paraphrase Mr. Vandenberg, would still fly from the dome of the Capitol as well as from the Kremlin.

<sup>17</sup> George De T. Glazebrook, "The Middle Powers in the United Nations," in *International Organization*, vol. 1 (June 1947) p. 314.

<sup>18</sup> U. S. Senate Document 59, 79th Congress, 1st Session, p. 10, quoted in Norman J. Padelford, "The Use of the Veto," in *International Organization*, vol. 2 (June 1948) p. 230<sup>6</sup>.

We should not, however, be surprised that the Soviet Union, as a minority power, is not ready to accept even minor limitations upon what is essentially a minority privilege. In fact, never in history has the majority principle appealed to permanent minorities that could not expect ever to profit from a free swing of the political pendulum. The Soviet Union is, therefore, inclined to see even in innocent and well-meant attempts to smooth the operation of the Security Council by limiting the scope and exercise of the veto the first axe-stroke against what she considers to be the democratic foundation of the United Nations.

Her suspicion, in this case, is the easier to understand since we have not—I regret to say—been fair to the Russians with regard to her veto policy. If the Russians have abused the veto, we have not failed to abuse their abuse. To be sure, in six cases the exercise of the veto was clearly intended to protect the Soviet satellites, and it blocked United Nations action that would have been justified or required under the Charter. In the great majority of the forty-one vetoes, however, Russia's motive was to maintain her relative power position in the United Nations rather than to obstruct its activities. It is only natural that this is a concern as dear to the Russians as it is to us, though as a majority power we need not for its sake employ the veto. No less than twenty-two vetoes were directed against the admission of new members in order to prevent an increase in the size of the majority in the General Assembly. And at least four vetoes, as has already been mentioned, can be interpreted as "the prevention of any formal action which, directly or by implication, would increase the competence of the General Assembly."<sup>19</sup>

The constitutional controversies in the United Nations thus make one thing abundantly clear. Any move on our part in the direction of extending the application of the majority principle, be it directly by limiting the veto or indirectly by strengthening

<sup>19</sup> Dennett, *op. cit.*, pp. 429 ff. This article and the one by Norman J. Padelford (cited above) contain judicial analyses of the veto question.

the General Assembly, will confirm the Soviet Union in her belief—a belief that is, unfortunately, based on a *Weltanschauung*—that we intend to transform the United Nations, originally planned as an organization within which the great powers would deal with one another on an equal footing, into an instrument of domination over Russia. Nor can we actually deny that this policy does fit our national interests better than those of Soviet Russia, at least as understood by her present rulers. They feel confident that they see through to the purely ideological roots of this policy. What they cannot see, what their very *Weltanschauung* prevents them from realizing, is that this policy, rather than being primarily inspired by utilitarian motives, is deeply rooted in our national history, and in our idealistic desire to see the governmental procedures of domestic democracy extended and applied to international politics, not for our sake alone, but for mankind's sake as well.

Dreaming of the Parliament of Man, we, for our part, find it no less hard to realize that any thing coming close to an attempt to make the dream come true is bound to nurture Russia's suspicion of encirclement. But we cannot any longer afford to ignore the evidence, if we want our United Nations policy to fulfill what is the main purpose and function of diplomacy: to remove unfounded suspicions and thus to decrease international tension. Reliance on ideas and techniques of diplomacy proper will better serve this end than any move toward world government.

# THE THEORY OF THE NTH WAGES ROUND

BY ALVIN JOHNSON

THERE is always something new under the sun. A new argument to justify demands for higher wages has become firmly imbedded in the official doctrine of the steel workers and automobile workers, and is making progress in other fields besides. The gist of it is that continuous prosperity depends on the success of organized labor in drawing to itself an ever-increasing share in the value output of economic enterprise.

The old argument from industrial justice is by no means in the discard. There are still wide areas in which the worker does not receive wages adequate to maintain an American standard of living. His appeal to the public stands on the ground of common humanity. Nor is the old argument of might as right obsolete. I doubt that any newfangled theories have penetrated the square head of John L. Lewis. He still stands out, a valiant exponent of

"The good old way, the ancient plan,  
That he shall take who hath the power,  
And he shall keep who can."

But the rising prosperity theory has all the signs of abundant vitality. It makes its appeal to all classes, not on the ground of justice alone, to which men have cried in vain since the time of paleolithic man, but on the ground of universal self-interest. Pay higher wages; you will accelerate the movement of goods from the market, assuring, along with abundance to the consumer, steady profits and stable security values, rich public revenues and generous appropriations. Who can fail to benefit? The new theory is fortified by a tangible strategy. Do not try merely to raise wages here and there opportunistically: strike for wages advancing

by "rounds," in ever wider circles. Do not let management unload the cost on the public in the shape of higher prices. That would leave profits intact, the absolute negation of the whole movement.

To persuade the public that the employer is fattening inordinately on profits is old union propaganda. But an essential part of the old argument is that the laborers are starving. This part of the argument does not convince when labor is receiving \$1.60 an hour, with steady employment. The new propaganda aims its shafts at profits directly. According to the argument, the purchasing power impounded in profits is mainly taken off the market, with the result that some part of the product of industry must remain unsold. Transfer profit funds to wages, and they will promptly appear on the market, helping to maintain prices and support prosperity.

Like most refined economic theory, the prosperity theory of rising wages was foreshadowed by popular doctrines dubbed unsound and fallacious by the professional economists. In the eighties and nineties of the last century the orators of the Knights of Labor and the Farmers' Alliance made much of the fact that the industrial worker earned too little to buy the products of the farm, and the farmer's income was kept at so low a level that he could not buy the products of industry. The stock explanation of this disastrous impasse was the cupidity of the profit-takers—employers, merchants, bankers, transportation agencies—that charged the industrial worker more for a lean roast than the farmer received for a whole fat cow. Vigorous, though not very successful, efforts were made to wipe out the ancient antagonism between farmer and urban worker and unite them in a crusade against the common enemy, the profit-taker. If this oppressor could be dethroned, it was urged, we should hear no more of granaries bursting with wheat that could not be sold, industrial plants closed down for want of market demand.

To the professional economists of the time all this argument was sheer nonsense. There was, however, one outstanding excep-

tion, John A. Hobson, with his underconsumption theory of economic crises. His argument was dismissed by the orthodox economist with the terse statement that overproduction and underconsumption are merely the two faces of the same coin. Hobson insisted that they are not. The approach to the problem of underconsumption was through stimulation of consumption; and this could be accomplished by raising wages and giving the laborer the possibility of consuming more of his product.

A few economists, younger men, as a rule, with labor and radical leanings, saw valid sense in Hobson's idea. But it never got a firm hold upon the economic mind before Keynes appeared, with his formidable mathematical apparatus and his consummate skill in exposition. Since Keynes, the dominant premise in economic analysis, among both conservatives and radicals, has been effective purchasing power. And no recondite analysis has been needed to support the presumption that the effectiveness of purchasing power depends, in greater or less measure, upon the distribution of income. Some types of income make for spending, some for saving. And continuous prosperity depends on a just equilibrium of spending and saving, an equilibrium that ceaselessly flits about, according to time and circumstance.

Years ago Walter Reuther of the automobile workers and Clint Golden espoused a simplified form of the Keynes theory and made it the basis of their tactics and strategy. Later they were joined by Philip Murray of the steel workers. One encounters the same theory wherever labor leaders gather. It is safe to say that sooner or later it will become the orthodox theory among labor economists.

It is spending that makes the wheels go round, so it is argued, and the worker is the best spender. Then give him a bigger share in the value output. That is the popular gist of the theory. I do not quarrel with the theory itself. But I want to look at actual situations, bearing in mind the relevance of time and circumstance.

It cannot be assumed that the recipients of profit are at all times and places active savers. The bondholder and stockholder develop

standards of living of their own, which may absorb their entire income. We have the classic instance of France, from 1875 to 1895. The national wealth showed no increase in that period. The lean cow, dissaving, ate up the fat cow, saving. It is only in dynamic situations that any large proportion of the national income is set aside for investment. Thus in Russia, with the Soviet government striving desperately to build up industry, it is reported that 30 percent or even more of the national income is applied to the building up of the economic machine. Little as I trust reports from Russia, this one seems credible. With the whole population held down under the Marxian iron law of wages, even though productivity is low there must be a considerable surplus for development.

We have the opposite situation in England. Although production thrives, very little surplus develops above the requirements of the standard of living. To modernize the equipment of the British economy some six billion dollars a year would be required through several years. But there are no six billion of surplus to be found nor even one half of that. The British economy has to rock along with equipment largely obsolete, and generally deteriorating.

Nor can it be assumed that what labor receives is uniformly expendable. A very considerable fraction of American labor carries old-line insurance, and this involves accumulations that increase the savings supply. Other considerable sums are accumulated through savings banks. Industrial pension systems, if soundly organized, must carry substantial reserves. The building of such reserves, whether under the straight pension plan or the contributory plan, takes purchasing power away from the commodity market. In the United States, and still more in semi-socialistic countries, we see labor savings assuming an increasingly important role in building capital supply. And in communistic countries, where labor is the sole legitimate recipient of income, the whole capital of the economy grows up out of what is theoretically compulsory savings from wages.

With due allowance for the possibility under exceptional conditions of full spending of capital income and significant saving from labor income, we are still safe in assuming that in the United States today wages are mainly spent while the income to capital is the chief source of savings. It may be that in the peculiar circumstances of present-day American industry the share of income going to capital is excessive; and it may be that as a consequence too much of the income is saved. The case is worth arguing.

Experience indicates that of the net value added by industry to materials from 60 to 65 percent goes to wages. Of the remaining 35 to 40 percent, which we may call gross capital return, one part goes to replacement and renovation, one part to extension of plant and construction of new plant, one part to taxes, one part to interest on debt. The remainder is profit available for dividends or for accumulation.

What specific values can we place on these shares? The only general statement we can safely make is that they will vary with the general economic movement. In a dynamic period with protean technological advance the rate of depreciation and obsolescence is high. There is a common formula that in an active establishment equipment wears out or becomes obsolete in seven years, on the average. In a period of general activity the impulse to expand is powerful. Profits are plowed back into the business; additional plant is annexed and developed. The two items together absorbed rather more than 10 percent of the national income in the period 1919-29, according to the calculations of J. Frederic Dewhurst and associates, *America's Needs and Resources* (New York 1947).

But this was a percentage of the national income, not of the income of industry apart. In the national income is included that of agriculture which, in the period in question, was living at a starvation level and had little to put into equipment. It included transportation, seldom prosperous enough for extensive improvement, or even for keeping pace with deterioration. It

included the income from services, involving insignificant capital investment. We are safe in concluding that a much larger percentage of the product of industry, in the narrow sense, went back into repairs, replacement, renovation, and plant expansion. To fix a definite percentage would be pure guesswork; but some guesses are safe. I will put this item at 15 percent, with apologies for my caution.

The remaining gross capital income, 20 to 25 percent of the value product of industry, must take care of taxes, salaries of management, interest on bonds and dividends. Obviously these items must be arranged on a priority scale. The first and completely ineluctable item is taxes. The next, legally, is interest on debt, bonded or floating, but by experience, higher administrative salaries may take precedence. Presidents and vice-presidents, from the first to the nth, continue to draw their salaries even when the bondholders' committees are sweating blood over the problem of receivership. The weakest position, last in the priority scale, is the stockholder, if the management is sufficiently secure in its control of proxies.

But wait. Was I justified in setting apart the requirements of repairs, renovation, expansion of plant and equipment as an antecedent claim? I was not. Rather than cut administrative salaries, interest on bonds, perhaps even dividends, a corporation will often postpone expansion, and even rock along with obsolescent equipment.

In England I have seen in active service a loom whose birth certificate shows the year 1857. For noble industrial antiques, there is nothing like the factories of France. But we Americans have ridden in railway coaches that were already dilapidated a quarter of a century ago, behind locomotives that in their prime may have drawn Grover Cleveland's private car.

At the depth of depression the share of national income that went to repair and replacement fell from 11 percent in 1919 to 5.6 in 1932. At the same time total income dropped to one half. This means that in terms of actual figures the productive energy

devoted to repairs and replacement fell to one quarter of the prosperity level.

We are considering the problem of transferring capital income by round after round to labor demands. This may be a desirable thing to do. I am personally convinced that continuous advance in wages is desirable, indeed necessary, in a dynamic society. But the process plunges inevitably into the nest of priorities. You can't cut into taxes. You can't cut into administrative salaries. You can't cut into interest on bonds. Maybe you can cut into funds for dividends. Most surely, you can cut into funds for repair, replacement, modernization, expansion. That happens whenever finances are low.

But these are funds that are spent, as surely and promptly as the funds that take the form of wages. Cut into them: the machine and material industries develop layoffs, with the inevitable falling off of general purchasing power. We have come to take for granted that new purchasing power operates with a multiplier. Throw a million of new gold into the market: it will mean three or four million of purchasing power before it is through. But the multiplier principle operates both ways. Rip a million out of the demand for machines. Three or four million will drop out of the general demand, before you are through.

We have here only a special instance of the time-honored rule that the machine industries, the heavy industries, are hit hardest in depression and are slowest to recover.

We return to our problem. How much is there in the theory that wages advance, round by round, can take purchasing power away from capital income, where it may be saved, and hoarded, and place it with labor as wages, where it will be spent? We have to conclude, the plan may be ideologically fine, but in real life is likely to run afoul of a complex of priorities that may defeat it, and with it, defeat the whole forward movement of technology and productiveness.

If an economy ever arrived at maturity, with all natural resources of effective economic value utilized, with every tech-

nique worked out to practical perfection, with habits of consumption well standardized, it might well be that excess savings, whether by capital or by labor, would leave an essential part of production unsold, with a resultant overproduction or underconsumption crisis. In times past economies have from time to time developed to a state of virtual maturity. In the view of John Maynard Keynes, western capitalistic economies were near the state of maturity and very little saving was capable of bringing on a general glut and unemployment.

But since Keynes wrote, war necessities have thrown open to the world an immense array of new inventions, new methods, new international economic relations. The world is not suffering from a glut of savings. If there is hoarding—and indeed, there is much hoarding in the United States—it is not because of a preference for liquidity, but because of doubts as to the fate of equity investments. Too brave a labor policy may easily fortify these doubts and stimulate the hoarding labor seeks to abate.

No one will question the wisdom of the leaders of labor in making scientific analyses of the value product of industry and its distribution, to determine whether or not industry can afford an advance in wages. All consumers would rather have the wages increase come out of profits than out of rising prices.

But neither the labor economist nor the government economists nor indeed economists at large can say just what proportion of gross capital income can be diverted to wages without placing a check upon technological maintenance and reasonable advance. No economist can say, with certainty, where the line is to be drawn between the wholesome and the injurious diversion of income from capital.

The time may come when our economic system will be so mature that extensive savings cannot be absorbed by productive uses. It may be that at some time the recipients of capital income will be unable either to invest the purchasing power that falls to them, or to spend it, raising their standard of luxurious living. In such a situation we should be drifting toward a crisis of under-

consumption, or what looks like the same thing, overproduction.

Such a condition would need correction. But it is doubtful whether the responsibility for correcting it can be carried by organized labor, operating through rounds of demand for higher wages, independent of the just claims to as good wages as the economic system can afford. For organized labor is after all not more than a quarter of our working force, and not one quarter of organized labor is strongly organized.

For organized labor as such, the good old way, the ancient plan of taking what can be had, appears still to be the most feasible procedure. And for the evil of excessive capital income, of hoarding and underconsumption, the modern state has an available remedy in a taxing power of an effectiveness never before approached in history and in the constantly expanding requirements of social security.

# THE NEW GERMAN CONSTITUTION

BY ARNOLD BRECHT

WRITTEN constitutions are historical documents, each bearing its own characteristic date, emerging from its own historical background through a genetic process of individual birth pangs, and each one setting its own mark, high or low, in the history of ideas. They are also sociological and economic documents, reflecting social and economic conditions and the play of social and economic forces. But in addition to all this they are something more. They are *constitutions*—formative documents establishing for an indefinite period the rules of the political game and of legal validity. Whatever the historical background and whatever the ideas, intentions, and abilities of the framers may have been, once adopted a constitution gains an objectivated, a factual significance. History acted upon its origin; now the document acts upon history.

The new German constitution—or, more accurately, the Basic Law for the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*)—of May 8, 1949, calls for an analysis from all these various angles. In other publications, to which I may be permitted to refer, I have dealt with its genesis after the collapse of the Hitler regime,<sup>1</sup> and its broader historical, social, and economic background.<sup>2</sup> The present paper concentrates on the rules-of-the-game qualities of the Basic Law, or in

<sup>1</sup> "Re-establishing German Government," scheduled for publication in the January 1950 number of the *Annals* of the American Academy of Political and Social Science, an issue on "Military Government."

<sup>2</sup> *Federalism and Regionalism in Germany—The Division of Prussia*, Institute of World Affairs Series (New York 1945), German ed. published by Dümmlers Verlag (Bonn 1949); and *Prelude to Silence—The End of the German Republic* (New York 1944), German ed. published by Verlag für Geschichte und Politik (Vienna 1948). These volumes refer to further literature. See also my complementary article, "Walther Rathenau and the German People," in *Journal of Politics*, vol. 10 (February 1948) pp. 20-48.

other words on its merits and demerits as a democratic constitution for a specific country.

For some time to come, Germany will be under the supervision of occupation authorities and will, in addition, be split into a western part, which recognizes the Basic Law, and an eastern part, which does not. These two important facts and the limitations they impose on the sovereign character of German governments are not the immediate topic of this paper. The question here is simply what kind of domestic government Germany will have under the Basic Law in those areas to which it applies (see Table 1), irrespective of corrective actions that may be taken by the occupation authorities.<sup>3</sup>

It is true that the framers of the Basic Law, in order not to be accused of contributing to the split of Germany, have emphasized its provisional character and have even avoided using the term "constitution." The last article reads: "This Basic Law shall become invalid on the day when a constitution adopted in a free decision by the German people comes into force." This clause is significant in our context on the ground that it acknowledges in advance the validity of a change in the Basic Law made not by amendment procedures but by a new constitutional convention. It does not, however, take from the instrument its character as a constitution. Any document that establishes a government with direct powers over individuals and lays down the rules of the political game and of legal validity is a constitution according to established terminology, whatever term may be used by the document itself. And in designating itself as a Basic Law for the Federal Republic of Germany rather than for its western sections, in making provision for the accession of other German Laender (Art. 23), and in dealing elaborately with all constitutional problems in its 146 articles (the Weimar Constitution had 181), and finally by the explicit statement

<sup>3</sup> See "Re-establishing German Government" (cited above) for the Occupation Statute of April 10, 1949, and the special reservations made regarding several clauses of the Basic Law in the "Letter of Approval" of May 12, 1949.

Table 1. THE ORIGINAL CONSTITUENT LAENDER OF THE FEDERAL REPUBLIC OF GERMANY, 1949<sup>a</sup>

Land	Capital	Population (in 1000s)	Area (in sq. km.)	Pop. Density (per sq. km.) <sup>b</sup>	Refugees (in % of pop.)	Representatives Fed. Diet <sup>c</sup> Fed. Council
North Rhine-Westphalia	Düsseldorf	12,939	34,100	378	8.0%	109
Bavaria	Munich	9,366	70,200	132	20.4	78
Lower Saxony	Hanover	6,962	47,200	146	25.7	58
Hesse	Wiesbaden	4,308	21,100	203	14.5	36
Württemberg-Baden	Stuttgart	3,920	15,700	249	17.5	33
Rhineland-Palatinate	Coblenz <sup>a</sup>	2,869	19,800	144	2.4	25
Schleswig-Holstein	Kiel	2,762	15,700	175	33.2	23
Hamburg	Hamburg	1,551	700	2,060	5.4	13
Baden (South Baden)	Freiburg	1,274	9,900	129	3.9	11
Württemberg-Hohenzollern	Tübingen	1,120	10,400	107	4.9	10
Bremen	Bremen	556	400	1,316	5.4	4
ALL LAENDER	Bonn	47,565	240,200	198	15.2	400 <sup>c</sup>
						43

<sup>a</sup> The Basic Law (Art. 23) mentions Berlin also, but this has met with a suspensive veto by the western Allies. For the time being, Berlin's city assembly has merely been authorized to send eight consultative delegates to the Federal Diet. See Brecht, "Re-establishing German Government," scheduled for publication in the January 1950 number of the *Annals of American Academy of Political and Social Science*, an issue on "Military Government," also for the emergence of the present Laender under Military Government, and *Federalism and Regionalism—The Division of Prussia*, Institute of World Affairs Series (New York 1945) pp. 146 ff. (with errata slip) for the genesis of the German Laender from 1815 to 1945. Figures in the first four columns are tentative.

<sup>b</sup> In comparison, 43 of the 48 states in the United States each have less than 100 inhabitants per sq. km.; only 3 have each more than 200 (1940 Census). Figures based on estimates for 1948 are United States, 19; France, 75; Belgium, 279; Netherlands, 285; United Kingdom, 206 (England and Wales alone, 287).

<sup>c</sup> Regular number, which may be increased through superproportional local victories (at present, 2). See section of article on Federal Diet.

<sup>d</sup> Transfer to Mainz is planned for the near future.

made in the Preamble that the German people in the western Laender "has acted also on behalf of those Germans to whom participation was denied," the Basic Law lays full claim to being judged for its qualities as a democratic constitution for Germany.<sup>4</sup>

### *The Main Constitutional Problem*

The process of giving Germany a new constitution has drawn world-wide attention to the federal problem involved, almost to the exclusion of all others. The emphasis placed on this particular aspect, however, is quite out of proportion to its relative importance. The foremost constitutional problem of Germany has been, and continues to be, not federalism, but the establishment and maintenance of a democratic form of government in a country where strong prodemocratic elements are flanked by strong antidemocratic wings.<sup>5</sup>

In order to understand this particular problem, of which Germany is the outstanding illustration, but which may become vital in other European countries too, it is important to be fully aware of its two essential elements—the considerable strength of prodemocratic as well as of antidemocratic forces. If it were true, as it has sometimes been alleged, that there exists no considerable number of true friends of democracy at all in Germany, there would be no democratic problem. Democracy then would simply have no chance, and it would be absurd to give it a trial. There is a genuine constitutional problem here merely because in actual fact large sections of the people are seriously deter-

<sup>4</sup> The "agreed Anglo-American translation" of the Basic Law (U. S. Department of State, *The Bonn Constitution*, Publication 3526, June 1949, Washington) may be found, together with many other relevant documents, in James K. Pollock, J. H. Meisel, and H. L. Bretton, *Germany Under Occupation* (Ann Arbor 1949). However, since it does not always render the meaning of the German text accurately enough for critical analysis, I have had to deviate from it in several of the quotations used in this article. On the law, see also Carl J. Friedrich, "Rebuilding the German Constitution," Parts I and II, in *American Political Science Review*, vol. 43 (June and August 1949) pp. 461, 704.

<sup>5</sup> The terms "prodemocratic" and "antidemocratic" are used throughout this paper in their western sense. See my article, "Democracy—Challenge to Theory," in *Social Research*, vol. 13 (June 1946) pp. 195, 198.

mined to pursue democratic ideals and methods—sections too large to abandon all efforts toward the establishment of a democratic government, but not large enough to make democracy sure and safe.

Figures may best serve to illustrate the point. During the thirteen years of the Weimar Republic, with the sole exception of the first nine months, the three fundamentally prodemocratic parties (then Social Democrats, Democrats, and Catholic Center) never obtained an absolute majority of the votes in the whole of Germany, and this fact had more to do with the collapse of the Weimar democracy than has caught the public eye.<sup>6</sup> They did, however, receive majorities in several sections of Germany throughout the period,<sup>7</sup> and in others as late as 1928,<sup>8</sup> and they generally came fairly close to a nation-wide majority. They received 45 percent of the seats in the Reichstag of 1920, 41 and 47 percent in the two elections of 1924, 49 percent in 1928 (when they fell short of a majority by only seven seats), and 39 percent in 1930. Furthermore, they were never confronted with a clear majority of any other group. The rightist parties, too, failed to gain majorities in all those elections; including even such groups as the German People's party and the Bavarian People's party, which straddled the fence, they always held less than half the seats, and as a rule fewer than the democratic parties. The remainder went to the leftist antidemocrats—the Communists. Owing to the growth of the two totalitarian wings during the depression, the three democratic parties were able to obtain only

<sup>6</sup> See *Prelude to Silence* (cited above) pp. 60, 129, and the last section of "Walther Rathenau. . ." (cited above).

<sup>7</sup> In the core of the Rhineland (election districts of Cologne, Aachen, and Trier), and until 1932 also in Westphalia-North, Württemberg, and Baden. If the fence-straddling Bavarian People's party is considered prodemocratic, Bavaria would have to be included. For further details see *Federalism. . .* (cited above) pp. 31 ff., with maps.

<sup>8</sup> Hanover (except its northeastern corner), Brunswick, Westphalia-South, Hesse, and Hamburg. Together with the regions mentioned in the preceding note, these sections comprise the entire area of the present eleven western Laender with the exception of the Ruhr (Düsseldorf district), Schleswig-Holstein, and part of Hanover.

about 33 percent of the seats in the last pre-Hitler elections of November 1932. Yet they still represented more than twenty million people, by no means a negligible figure; and the National Socialists, having gained only three seats more, still failed to muster a majority even in combination with all the other rightist and semirightist parties.<sup>9</sup> They achieved such a combined majority for the first time after the Reichstag fire, under the reign of terror in the election of March 5, 1933.

This unbalanced triangular situation during the Weimar period must even today be considered more telling than either the seemingly antidemocratic unanimity during the Hitler regime, to be explained in good part by terror, or the ostentatious prodemocratic unanimity in post-Hitler elections, to be explained in part by camouflage. True, in the first election for the new Federal Diet (Bundestag), held August 14, 1949, the three leading prodemocratic parties (now Social Democrats, Christian Democrats or Christian Socialists, and Free Democrats) received 322 out of 402 seats, that is, more than 80 percent of the total, and none of the other groups would admit to being antidemocratic. In favor of this test's partial validity it might be said that experience with the National Socialists had driven many Germans back into the democratic fold, that others wished at least to give democracy another fair trial, and that in pre-Hitler days, too, the prodemocratic record of western Germany was much better than that of central and eastern Germany, which, with the exception of Silesia, always had undemocratic majorities. It would, however, be premature to accept this test as final. Unable to form aggressively antidemocratic parties of the right wing under Military Government, the potential adherents of such parties are obviously marking time, either hiding behind the shield of prodemocratic parties or abstaining from the vote,

<sup>9</sup> The 584 seats (November 1932) were distributed as follows: National Socialists, 196; the three prodemocratic parties, 193; Communists, 100; all others, 95. The simple majority (293) could be reached by either the National Socialists or the democratic parties only with the help of the Communists.

just as they did after World War I in the 1919 election, but ceased to do as early as 1920. They are likely to come into the open sooner or later, electing candidates of their own kind unshackled by prodemocratic party ties.

The present low ebb of communist votes in western Germany has contributed greatly to the favorable ratio of prodemocratic ballots.<sup>10</sup> Should the Communist figures rise, together with the rightist votes, the prodemocratic margin in the German Federal Diet might become very slim or even vanish again. This danger is not ruled out by more optimistic expectations, which I share.<sup>11</sup> Any democratic constitution for Germany must, therefore, treat the uncertainty of prodemocratic majorities as its foremost problem.

Students of modern constitutions must guard against the fallacy that because many other factors too are important for the survival of democracy, the factor of numerical majorities can be neglected. As a matter of undeniable fact, figures do count, in a truly mathematical sense, under the democratic rules of the game much more than under any other. Oligarchies may be able to go on for centuries without majority backing. Democracies need majorities, if not in the population at large (see

<sup>10</sup> In the election of August 14, 1949, the Communists received only 5.7 percent of the votes. They had won 9.4 percent in the last elections to the Laender diets (1946-47), and from 5 to 15 percent in the corresponding districts in November 1932, when they experienced their pre-Hitler boom; only in the Ruhr did they soar as high as 28 percent at that time. Their strongest support had always been, apart from the Ruhr and Berlin, in Brandenburg and the two Saxonies (province and state), now in the Soviet zone. For details see *Federalism*. . . (cited above) p. 37, with map.

<sup>11</sup> I do not expect the two antidemocratic wings in western Germany to win more than 30 to 40 percent of the seats even after complete withdrawal of occupation forces—the Communists not exceeding 15 percent, and the rightist parties 25 percent. This estimate—based on election statistics (past and current), on personal knowledge of factors and people, and on the judgment of many competent German observers on the spot, filtered through long discussions of all contributing factors—cannot, of course, claim final certainty. It is made under several assumptions, namely, that the western powers will support Germany's economy so as to avert its collapse, that the German governments will have adequate police forces at their disposal, and that there will be no war.

below) at least in the legislature. Democrats who hold only 49 percent of the seats are constitutionally unable to take action that they could take if they held 51 percent.

Inclined to disregard constitutional niceties because they expect progress merely from the spreading of wisdom and education, philosophers and educators should not overlook the fact that the kind of wisdom and education that can be spread in a country depends heavily on who is running the government—prodemocrats or antidemocrats. And that may depend on details of the constitution. Nations like the United States or Great Britain, where more than 90 percent of the people are practically agreed on being governed under the democratic rules of the game, need not, or at least not yet, worry about how to insure the maintenance of their democratic forms of government in the face of strong antidemocratic forces. Actually their constitutions take no account of such a situation, and for this very reason they cannot be simply copied in countries where large antidemocratic forces exist.

#### *Why Federalism Does Not Solve the Main Problem*

Any full description of the distribution of powers between the federal government and the governments of the *Laender* in the Basic Law would fill many pages with tiresome details, most of which are of no interest for the solution of the main problem and would only tend to detract attention from it. Suffice it to say at this time that the sum total of all federal powers, including those of both chambers and of the executive branch, is very great. Legislative powers will be from the outset far broader than those of the United States Congress, covering—in addition to economic affairs in the broadest sense—such matters as civil and criminal law, judicial organization and procedure, associations and public meetings, socialization of the means of production, public assistance, housing, and principles of public service in the *Laender* and in local government (Arts. 70 ff.). And while the original *administrative* activities of the federal gov-

ernment in the field have been limited rather narrowly, they too can be expanded at any time with the approval of a simple majority in the second chamber (Art. 87, par. 3). Concurrent majorities in the two chambers will find few limits indeed imposed by state rights, and two-thirds majorities, which suffice to amend the constitution, virtually none in any particular matter.<sup>12</sup> Relegating a fuller analysis of the details to a special study,<sup>13</sup> the following discussion will limit itself to explaining why federalism offers no solution of the main problem, and analyzing the attempts made in the Basic Law to solve it.

American tradition sees in federalism an essential element of true democracy—government growing up from the grass roots rather than descending from above. Great Britain and France, on the other hand, rely for the restraint of their national governments on wisdom rather than on formal rights of state and local units.<sup>14</sup> With apparently little political wisdom available in Germany, it seemed logical enough for the victors, and especially for Americans, to insist that the new German nation be built up from the grass roots rather than from the top.<sup>15</sup> But this device fails to guarantee democracy where the grass roots are not altogether democratic. In this situation, keeping the local area free from central interference may mean only allowing the undemocratic weeds to spread the more freely. To illustrate, under the old centralizing Prussian laws local elections to the office of mayor needed confirmation by the state government. This enabled the Prussian democratic government to refuse

<sup>12</sup> Consequently, the three western powers have reserved to the occupation authorities the right to control the extent to which the federal powers as against state (Laender) powers will be used in actual practice, and have required their previous approval for any amendment to the Basic Law. See "Letter of Approval" and Occupation Statute, discussed in "Re-establishing German Government" (cited above).

<sup>13</sup> To be published in a later issue of *Social Research*.

<sup>14</sup> Article 89 of the new French Constitution promises an "organic law" on local government.

<sup>15</sup> On this point there was quadripartite agreement at the Potsdam Conference of August 2, 1945 (No. 9).

confirmation to National Socialist and Communist mayors. By strengthening local self-government, the Military Government made it technically impossible for the German Land governments to prevent the establishment of former Nazi sympathizers in local offices, apart from the scant disqualifications for public office pronounced by denazification tribunals as a concomitant element of punishment. Consequently the local weeds have been able to spread lustily.<sup>16</sup>

In the struggle between prodemocratic and antidemocratic forces, federalism is a double-edged sword, which can swing either way. It can permit democratic sections to stay democratic even after the country as a whole has obtained undemocratic majorities. Thus Prussia could continue under a democratic government after 1919 though Germany as a whole had lost her democratic majority. And when in 1932 the Prussian legislature, too, had obtained undemocratic majorities, the Rhineland theoretically could have preserved a democratic government if it had formed a separate state within the union; Prussia's internal centralization may at that time be said to have offered the final stepping-stone for the Nazi victory, because Hitler had only to appoint a National Socialist minister of the interior in Prussia (February 1933) to get the entire Prussian police and other field agencies (*Regierungspräsidenten*, *Landräte*, and the like) under his dominion.<sup>17</sup>

But there is another side to this story. When the democratic forces do hold majorities in the entire country they may, in a nonfederal structure, preserve democratic government also over sections that have undemocratic majorities. So long as Prussia had a democratic central government, the latter could keep control over police, judiciary, education, and local government

<sup>16</sup> See John H. Herz, "The Fiasco of Denazification in Germany," in *Political Science Quarterly*, vol. 63 (December 1948) p. 569, and especially pp. 591-92. Article 28, paragraph 2, of the Basic Law, too, seems to guarantee the municipalities independence in the election of their officers.

<sup>17</sup> In order to appoint his men ministers in Prussia, however, Hitler had first to break the Weimar Constitution.

in the eastern provinces as well, which, as states within a federal structure, would have had undemocratic governments (with the sole exception of Silesia) from 1920 on, a situation that would have facilitated the rise of fascism considerably. For weak as state rights were in other respects during the Weimar period, they were strong enough to make it all but impossible for the federal government to interfere with the challenging mobilization (*Aufmarsch*) of nationalistic and National Socialist elements within several of the Laender outside Prussia—first in Bavaria, then in Thuringia, Brunswick, Oldenburg, Mecklenburg, and others. The police and the administration of justice, especially the instruction of district attorneys and the appointment of judges, were constitutionally in the hands of the Laender governments. The federal government was barred from interference in such matters, at least under normal conditions.<sup>18</sup>

It will again be so barred in principle under the new Basic Law. The extraordinary powers which the President of the republic had under the Weimar Constitution (Art. 48) to interfere with the Laender police by emergency decree, and the nominal right of the national legislature—reduced to nonuse (*desuetudo*) in actual practice because of the resentment of the Laender—to legislate on police matters in case of “need” (Art. 9), have been abolished in the new constitution. It was, however, clearly impossible in view of the experiences of the Weimar period not to recognize the danger that local totalitarian upheavals might once more win the local support of the police and judicial administrations of Laender governments. The Basic Law, therefore, gives the federal cabinet the unprecedented power to place the police in any or all of the Laender under its own orders whenever there is danger “for the existence or for the liberal democratic basic order” of either the entire federation or one of the Laender and the respective Land is “not itself prepared or in a position to combat the danger” (Art. 91, par. 2).

<sup>18</sup> *Federalism*. . . (cited above) pp. 21 (Prussia), 27 (Bavaria); *Prelude to Silence* (cited above) pp. 23, 133 (general police powers).

The only federalistic safeguard against abuse of this federal power will be the stipulation that the cabinet ordinance must be repealed if the Federal Council by majority so demands.<sup>19</sup> But no individual Land or small group of Laender can block federal intervention.

This is, in so far as suppression of totalitarianism is concerned, a fair solution of a delicate problem. It demonstrates clearly, however, that in a country such as Germany rigid federalization could not be laid down in the constitution without endangering the solution of that main problem.<sup>20</sup>

#### *Basic Law versus Totalitarianism*

Keeping the federal government democratic in the face of strong antidemocratic forces is, of course, to a great extent outside the problem not only of federalism but of constitutional structure altogether. Constitutions can, however, do much to improve or impair the chances of democracy, and the framers of the Bonn Basic Law deserve credit for paying full attention to this primary problem at a time when the international interest was absorbed by secondary issues.

In five ways the new constitution tries to combat totalitarianism and, simultaneously, its treacherous progenitor, anarchy. First, it divests the President of the republic of the independent authority and powers he held under the Weimar Constitution. Second, while keeping the Chancellor (Prime Minister) strictly controlled by the legislature, it strengthens his position both as to authority and stability. Third, it tries to secure a democratic majority in the Federal Diet by keeping antidemocratic extremists out of it. Fourth, it strengthens the check of the second chamber, the Federal Council, upon the first. And fifth, it increases the guarantees of personal freedom against legislative

<sup>19</sup> The three western occupation powers have made the reservation in their "Letter of Approval" that the federal police power, described above, "may not be exercised until specifically approved by the Occupation Authorities."

<sup>20</sup> See also Art. 37 on federal compulsion (*Bundeszwang*) against a Land that fails to fulfill its constitutional or legal duties.

and executive encroachments. While in the first two points the Basic Law more or less follows general trends in modern constitution-making—though not without significant peculiarities—and in the fourth resumes older German traditions, it has gone further than other democratic constitutions especially in the third and fifth points, that is, in its provisions against the penetration of antidemocratic forces into, and antidemocratic actions by, the government.

*The Federal President (Bundespräsident)*

Wont to see in the President's popular election and independent powers one of the pillars of their own system of government, Americans easily overlook the simple truth that the election of a democratically-minded man to this powerful office is guaranteed by nothing but the fact that the United States citizens are practically unanimous in wanting him to be so. As long as this practical unanimity prevails, the two big parties and any seriously competing third party will always present candidates well known for their—generally speaking—democratic convictions.

Wherever antidemocratic forces are strong, however, or people are wavering in their loyalty to democratic principles, popular election of a chief of state endowed with independent powers may become a serious threat to the very existence of democracy and a steppingstone for the establishment of some kind of dictatorship, as has been shown by the election of Louis Napoleon in France after the 1848 revolution, of Field Marshal Hindenburg in Germany after Friedrich Ebert's death in 1925, and of innumerable South American dictator-presidents. The chances of undemocratic outsiders in presidential elections will only grow where the use, in other elections, of proportional representation splits the political community into numerous political parties none of which can hope to find majority support for its regular leader.

Warned by their experiences in the Weimar period the framers

of the Bonn Basic Law abandoned direct election of the President. He is elected indirectly by a special convention, called the Federal Assembly (Bundesversammlung), consisting of all members of the Federal Diet (Bundestag) and an equal number of representatives of the constituent Laender.<sup>21</sup> The quota from each Land, determined by population, is filled by delegations composed proportionately according to the strength of the parties in the respective Land.<sup>22</sup> This procedure, the details of which lean more to the model set by the Spanish republican constitution of 1931 and the new Italian Constitution of 1947 than to the simpler French system of presidential election through the two chambers combined, guarantees selection of a moderate parliamentarian as long as moderate forces muster majorities in the legislatures. Had it been applied in Germany after Ebert's death, Hindenburg would not have been elected; he would not even have become a serious candidate.

In addition to the great authority that was given him by popular election under the Weimar Constitution, the German President at that time was endowed with four powers, which lent themselves to abuse and whose actual abuse played an eminent role in the quasi-legitimate totalitarianization of the German government. First, he could provisionally appoint any man of his choice to the office of Chancellor, conveying to him the full constitutional rights of the position until a parliamentary vote of censure should enforce dismissal. Second, he could at any time dismiss the Chancellor, even if the latter had not

<sup>21</sup> To be elected the candidate must receive the votes of the absolute majority in the first or second ballot, or of a relative plurality in the third. This is less than what is now required in France (always absolute majority) and Italy (two-thirds majority on the first two ballots and absolute majority on the third). In the first presidential election (September 12, 1949) Professor Theodor Heuss was elected on the second ballot with 416 votes; 312 votes were cast for the Social Democrat Dr. Schumacher and other votes were scattered. The absolute majority was 403.

<sup>22</sup> This, it seems, has come to mean in actual practice that the strength of the parties is measured by the results of the latest preceding election, which in 1949 was that to the Federal Diet, rather than by those of earlier elections to the existing Laender diets, which had occurred about three years before.

received a vote of censure. Third, he could at any time dissolve the national legislature with the countersignature of any Chancellor, even of one who had not yet secured a vote of confidence. And fourth, he could legislate by emergency decree, with the countersignature of any Chancellor, whenever he, the President, felt that public security and order were seriously imperiled. He could then even disregard, or generally suspend, the fundamental human rights otherwise guaranteed by the constitution, with no inviolable minimum standards secured in such a situation. True, he had to repeal his decrees whenever the legislature so demanded, but no provision was made for the contingency that when the Reichstag had been dissolved it was incapable of asking for the repeal.<sup>23</sup>

After what happened in 1932-33, these four powers were abolished in the new constitution as a matter of course. Henceforth no Chancellor can function before he has been elected to his position by the Federal Diet (Art. 63), nor be dismissed against his will before the Federal Diet has elected a new Chancellor (Art. 67). The President has only the privilege of nominating the candidate on whom the first vote is to be taken. If his candidate fails to obtain the absolute majority of the votes, any other candidate may be elected within a fortnight by absolute majority, or thereafter by relative plurality of the votes.<sup>24</sup> In the latter case of election by mere plurality, the President may appeal to the people by dissolving the Diet; but even then he cannot pick the Chancellor himself, either before or after the parliamentary election. Once elected, however, except in

<sup>23</sup> For legal details and the actual role played by these powers in the collapse of democracy in Germany, see *Prelude to Silence* (cited above) pp. 48 ff., 56 ff., 138 ff. Lack of prodemocratic majorities—qualified majorities would even have been necessary—prevented correction of these mistakes after they had been discovered (*ibid.*, p. 49).

<sup>24</sup> The term "absolute majority" will be used hereafter for a majority of all the votes that *can* be cast in the respective body, as distinct from the majority of the votes actually cast in the individual balloting. Election by mere plurality after two weeks is a demand milder than that of the French Constitution, which always requires absolute majority (Art. 45).

case of death or resignation the Chancellor loses his post only when a new Chancellor is elected by an absolute majority of the Diet (see below). There is no room for any further presidential interference.

Dissolution of the Federal Diet will be possible only in two precisely defined situations, namely, (1) if the Diet in its first election of a Chancellor, or after a vacancy caused by death or resignation, fails for a fortnight to elect a Chancellor with absolute majority, as described above, and (2) if a legitimately elected Chancellor fails to obtain a vote of confidence which he had requested, and the Diet thereafter fails to elect another Chancellor with absolute majority within three weeks (Arts. 63, par. 4, and 68).<sup>25</sup>

Had these rules been in force in 1932, Hindenburg could not have dismissed Heinrich Brüning, who had not been censored by a legislative majority, nor appointed Franz von Papen, Kurt von Schleicher, or Adolf Hitler, none of whom had been proposed by majorities, nor dissolved the Reichstag three times within eight months without giving it any opportunity to elect a new Chancellor.

Emergency legislation, in the sense of a simplified, or at least an alternative, process of legislation in a national emergency, has not been completely abolished in the new German constitution, as it was in the French after Marshal Pétain's emergency legislation, authorized by the 1940 constitutional amendment, had led to similarly bitter experiences in France.<sup>26</sup> The peculiar conditions of Germany seemed to make it necessary to provide for an emergency exit from a possible legislative impasse. But the need has been met in a far more careful manner than it had

<sup>25</sup> In these two situations dissolution has been made possible without further requirements, such as the previous lapse of eighteen months and the previous occurrence of two crises within such a period, as under the new French Constitution (Art. 51).

<sup>26</sup> The first draft of the French Constitution, rejected by referendum, still provided for emergency legislation; this was ruled out in the constitution as finally adopted.

been in Weimar. Authority to issue emergency decrees is given, not to the President but the Federal Council (Bundesrat), that is, the representatives of the Laender governments, indirectly controlled by the people, and this authority has been limited both as to substance and time. Only if the legitimately elected Chancellor fails to obtain a vote of confidence when he requests it, and the Federal Diet fails to agree by absolute majority on the appointment of a new Chancellor, can emergency legislation by the Federal Council be put into operation. In such a situation the President can, with the Federal Council's approval, instead of appealing to the people (see above) proclaim a "legislative emergency" (*Gesetzgebungsnotstand*) for a bill that has been rejected although it had been declared urgent or had been tied to the request for a vote of confidence. If then rejected again by the Diet, or not acted upon within four weeks, the bill can be passed by the Federal Council over the head of the Diet (Art. 81). For six months thereafter the Federal Council can also pass any other bill that is rejected by the Diet. Then the emergency power expires automatically and cannot be revived under the same Chancellor.

Whatever the merits or demerits of this new device,<sup>27</sup> neither the President nor the Federal Council can escape from the constitutional safeguards of human rights through a switch to emergency legislation. For the Basic Law, in marked contrast to the Weimar Constitution, states expressly that the emergency powers can never be validly used either to amend, or wholly or partially to repeal or suspend, the Basic Law (Art. 81, par. 4). And with regard to the parliamentary rights of the Federal Diet it must be remembered that, whenever in a conflict between the Diet and the Chancellor the majority is able to agree on a new Chancellor, there is no room for emergency legislation.

By taking away from the President the great authority that radiates from direct popular election and almost all independent powers, the Basic Law has removed the ambivalent dualism of

<sup>27</sup> See the section on the Federal Council below.

powers that characterized the Weimar Republic.<sup>28</sup> The German Federal Republic will be a parliamentary democracy, where constitutional power is concentrated in the two chambers, that is, the Federal Diet and the Federal Council. The only independent power of any significance left to the President is his right to appeal to the people in case a Chancellor is elected by the Diet with a mere plurality of votes (see above). In all other situations, his actions are controlled directly or indirectly by at least one of the two chambers. His official acts need the Chancellor's or the appropriate minister's countersignature, though not both, as do presidential acts in France.

Some controversy may be expected in the future, as similar controversies have been known in Great Britain, regarding the question whether the President not only needs the Chancellor's approval for his acts but also is constitutionally bound to act whenever the Chancellor requests him to take a constitutionally legitimate action. This question—which should be treated as a political rather than legal problem—ought to be answered in the affirmative in most cases, such as appointment of ministers proposed by the Chancellor and appeal to the people in case the Diet refuses to grant a vote of confidence without electing a new Chancellor. It seems absurd to assume that the President, who cannot refuse appointment of the Chancellor-candidate nominated by the Diet's majority, should have the right definitively to refuse appointment of a minister whom the Chancellor, undeserted by his majority, legitimately wants him to appoint.<sup>29</sup>

<sup>28</sup> This is in line with the French system but in contrast to the new Italian Constitution which, much closer to the Weimar model, has granted the President the right tentatively to appoint the Prime Minister and with ministerial countersignature to dissolve the legislature (either chamber!) and to issue emergency decrees of the Cabinet. See Mario Einaudi, "The Constitution of the Italian Republic," in *American Political Science Review*, vol. 42 (August 1948) p. 661.

<sup>29</sup> These lines were written before the precise question here discussed had become the source of the first constitutional conflict in Germany. President Heuss assumed that he could refuse appointment of ministers proposed by Chancellor Adenauer, while Adenauer insisted that the President could not refuse. The matter has been settled for the moment by agreement on the appointments, but it may lead to other conflicts in the future.

The question whether the King must dissolve the Commons whenever the Prime Minister in line with established precedents asks him to do so has often been discussed in Great Britain, with the pragmatic trend in the affirmative direction.<sup>30</sup> There remains, however, some doubt regarding the decision of the President to set in operation emergency legislation by the Federal Council. By explicitly leaving this decision to "the President with the approval of the Federal Council" the Basic Law seems to indicate that the President should be free to refrain from taking this particular step even if the Chancellor wants him to do so.

Small as the President's independent powers will be, his influence as a quasi-neutral arbiter, moderator, warner, and adviser may at times become great and wholesome. The fact that at any time he has ready access to the Chancellor, cabinet, party leaders, occupation authorities, and foreign missions, will give him unique opportunities to be useful in a time of trouble. His term of office, although only five years as compared with the seven years under the Weimar Constitution, is long enough to let him see at least two Federal Diets in two legislative periods (four years), and at least once nominate a Chancellor. He may succeed himself in office, although only once in immediate succession.

#### *The Federal Chancellor (Bundeskanzler)*

The Chancellor's position has been strengthened first of all by the almost complete freedom granted him from interference by the President. It has been even more strengthened by the fact,

<sup>30</sup> See W. I. Jennings, *Cabinet Government* (London 1936) pp. 317-18. "During the last hundred years there is no instance of a refusal of a dissolution by the King when advised by the Cabinet. There has been, nevertheless, a persistent tradition that he could refuse if the necessary circumstances arose. It is difficult to see what these circumstances would be. . . . Thus, while the King's personal prerogative is maintained in theory, it can hardly be exercised in practice." Prime Minister Ramsay MacDonald denied the right of the King to refuse when he asked him to dissolve the Commons in 1924. Although Asquith, leader of the Liberals, took the opposite view, the King did yield in practice. See also Friedrich, *op. cit.*, p. 715.

already mentioned, that once elected he will lose his post, except in case of death or resignation, only if a new Chancellor is elected by an absolute majority of the Diet. This is the only form in which a vote of censure against the Chancellor or his cabinet can validly be passed. A cooling-off period of forty-eight hours must elapse between introduction of the censuring motion and the balloting on it. The pre-Hitler travesty of a parliamentary majority overthrowing a Chancellor without being able to agree on another will thus be avoided. Nor can a disgruntled coalition party force the Chancellor out simply by withdrawing from the majority; to overthrow him it must be able to offer a new majority-supported Chancellor. In this respect, as in others, the new German constitution goes beyond the French which, while also requiring absolute majority for the overthrow of the cabinet, does not demand simultaneous appointment of a new Prime Minister, thus leaving open the possibility of a prolonged crisis.<sup>31</sup>

Although the Chancellor needs no further vote of confidence after his election, not even when he presents his cabinet, he may himself take the initiative and ask for such a vote. In this case, which likewise requires a forty-eight-hour lapse between motion and vote, he wins the right to ask for dissolution of the Diet if it should refuse its confidence. He loses this right, however, if the Diet elects a new Chancellor prior to dissolution (Art. 68).

While the Chancellor's right to see his chosen collaborators appointed by the President without a veto may still be open to question (see above), there is no doubt that once appointed he can keep them in his cabinet as long as they agree, until he himself is ousted by the Diet. There will be no valid vote of censure against individual cabinet members.

Another cubit has been added to the Chancellor's official stature by the prerogative granted the cabinet in budgetary matters after the old British model. The Diet may not add to the expenditures proposed by the cabinet, or enact measures implying additional

<sup>31</sup> Neither the German nor the French Constitution gives the second chamber, too, the right to overthrow the cabinet, as does the new Italian Constitution.

expenditures, over the cabinet's veto.<sup>32</sup> The only way to force the cabinet to engage in higher expenditures than it is ready to allow is to overthrow the Chancellor with simultaneous election of a successor.

Thus the German Chancellor has received a position similar to that of the British Prime Minister within the federal government's powers. He still lacks, however, the latter's control over the agenda of the two houses, and his official leadership over the party in power. Unlike the British Prime Minister, the German Chancellor will sit not on the front bench of his party but—in line with German tradition derived from feudal and monarchical diets—opposite all parties on a dais, actually confronted also by his own party under the parliamentary leadership of potential competitors.

Notwithstanding his strong position the Chancellor, like his British and French counterparts, will be under full parliamentary control, for the Federal Diet may at any time overthrow him by electing a successor. The two extraordinary powers of dissolving the Diet or setting emergency legislation by the Federal Council in operation can be exercised only in case the majority of the Diet is unable to agree on the appointment.<sup>33</sup>

<sup>32</sup> Article 113 reads: "Decisions of the Bundestag and of the Bundesrat which increase the budget expenditures proposed by the federal government, or imply, or entail for the future, new expenditures, shall require the approval of the federal government." There is, however, this difference from the British Standing Order No. 66 that in Britain even the discussion of a motion for increased expenditures requires the cabinet's approval, while in Germany the cabinet's veto is limited to disapproval of the Diet's decision. On the other hand, the German formula regarding measures that "may entail" new expenditures in the future goes further than the British model and is sure to lead to a good deal of controversy and uncertainty. See also Article 17 of the French Constitution, which blocks proposals for increased expenditures only during the discussion of the budget and of supplementary credits.

<sup>33</sup> The first Chancellor, Dr. Konrad Adenauer, nominated by the President, was elected September 15, 1949, on the first ballot with 202 out of the 402 votes of the Diet, precisely the minimum required for a valid election; 142 members voted against him, the others abstained or were absent, except for one vote which was invalid. His cabinet consists of members of the Christian Democratic Union, the Bavarian Christian Social Union, the Free Democratic party, and the German party.

*The Federal Diet (Bundestag) I: Elections*

Through its dual control over the executive branch and legislation,<sup>34</sup> the Federal Diet will be the most important political factor in Germany. So long as prodemocratic majorities are secured in the Diet, democracy will have a good chance. How to secure such majorities in view of the German background has been the thorniest constitutional problem. Two devices could be tried: a milder one—majority elections in single-member constituencies instead of proportional representation; and a more radical one—outlawing the competition for parliamentary seats by antidemocratic forces, at least by their more extreme categories. The Germans, all but by-passing the milder device, have concentrated on the stronger.

Proportional representation has, among other grave shortcomings not to be discussed here, the disadvantage that it makes it possible for antidemocratic extremists to penetrate into the legislature, and develop their nuisance tactics there at a time when elections in single-member constituencies give them no chance because the moderate groups are able to outvote them locally. In view of the sinister role proportional representation played in the failure of the Weimar Republic,<sup>35</sup> it was one of the Military Government's major errors to allow its re-use in Land elections (1946). Three years later, when the Military Government had begun to see the importance of this issue, it seemed too late to impose a strict veto on the use of proportional representation in the federal legislature.

The Basic Law has not repeated the mistake of the Weimar Constitution, and of several of the new Laender constitutions, of prescribing the use of proportional representation. It has wisely left this matter to simple legislation. The electoral law of June 15, 1949, however, did actually reintroduce proportional repre-

<sup>34</sup> The Basic Law does not provide for popular initiative and referendum as did the Weimar Constitution, except for changes in Laender boundaries (Art. 29).

<sup>35</sup> On the facts see *Prelude to Silence* (cited above) pp. 47, 126 ff., and F. A. Hermens, *Democracy or Anarchy?*, with an introduction by C. J. Friedrich (South Bend, Ind., 1941).

sensation in the first elections of the Federal Diet. The outcome of the protracted debates had been an apparent compromise: 60 percent of the deputies from each Land were to be elected, just as in the United States and Great Britain, by plurality in single-member constituencies, the other 40 percent proportionately from state-wide party lists. To illustrate, 65 of the 109 members to be elected in North Rhine-Westphalia<sup>36</sup> were to be chosen by plurality in one-member constituencies, and another 44 from state-wide lists. Seats from these lists were to be divided among the various parties proportionately according to the number of votes they received. Yet, with each voter casting one ballot only, to be counted automatically for both the local candidate and his party, and the number of local candidates elected for each party to be deducted from the seats allotted it proportionally, the effect of the compromise was bound to be almost as proportional as under pure proportional representation (see Table 2).

It is characteristic of both proportional representation and the failure of the German electoral law to eliminate it that the Communists gained fifteen seats from the state-wide lists, though they had been unable to win a single seat in any local constituency by plurality.<sup>37</sup> It will be equally impossible under such a system to keep the right-wing extremists, when they make their undisguised reappearance, out of the Diet by outvoting them locally. The American or British plurality system, had it been applied pure, would have given the three leading democratic parties 93 percent of the seats in the Diet instead of the 81 percent they now hold, and the two major parties—Christian Democratic (Social) Union and Social Democrats—88 percent instead of 68. The Christian

<sup>36</sup> The number of seats to be filled by each Land was fixed by population. The total number of seats was to be 400 plus the number of superproportional local victories, that is, candidates locally elected beyond their party's proportional claim to seats. There were only two such superproportional local victories in the 1949 election, raising the total to 402.

<sup>37</sup> Lists that received less than 5 percent of the votes were to be disregarded. But this could not keep out the Communists whose average was 5.7 percent and who had less than 5 percent only in Bavaria, Schleswig-Holstein, and Württemberg-Baden.

Table 2. ELECTIONS TO THE FIRST FEDERAL DIET IN GERMANY, AUGUST 14, 1949

Parties	Seats Won	Votes Cast (in thousands) *											
		All Laender	NR-W	Bavaria	LSax	Hesse	W-B	R-P	S-H	Hamburg	SB	W-H	Bremen
Government Coalition													
Christian Democratic (Social) Union <sup>b</sup>	139	7,357	2,481	1,380	594	454	542	702	429	179	277	268	51
Free Democrats <sup>c</sup>	52	2,789	580	404	252	596	318	227	103	143	95	69	—
German party	17	940	—	—	598	—	—	—	169	119	—	—	55
Opposition, Left													
Social Democrats	131	6,932	2,108	1,075	1,123	683	441	409	413	358	129	86	105
Communists	15	1,360	512	195	104	142	129	89	44	77	23	24	21
Opposition, Center and Right													
Bavarian party	17	987	—	987	—	—	—	—	—	—	—	—	—
Economic Reconstruction party	12	682	—	682	—	—	—	—	—	—	—	—	—
Zentrum	10	727	602	—	113	—	—	—	13	—	—	—	—
Conservative and Right parties	5	429 <sup>d</sup>	118	—	273	—	—	37	11	—	—	—	—
Emergency Union	1	292	—	—	—	—	292	—	—	—	—	—	—
South Schleswig group	1	75	—	—	—	—	—	—	75	—	—	—	—
Candidates without a party	2	848 <sup>d</sup>	157	3	273	244	22	5	105	4	—	—	27
Others	0	305	164	—	33	6	—	—	18	14	19	6	46
TOTAL	402	23,724	6,722	4,726	3,363	2,125	1,744	1,469	1,380	894	543	453	305

<sup>a</sup> All figures on votes are tentative. Slight discrepancies between totals and sums of individual items are due to rounding. Abbreviations: NR-W, North Rhine-Westphalia; LSax, Lower Saxony; W-B, Württemberg-Baden; R-P, Rhineland-Palatinate; S-H, Schleswig-Holstein; SB, South Baden; W-H, Württemberg-Hohenzollern.

<sup>b</sup> Christian Democratic Union and Christian Social Union (CDU/CSU).

<sup>c</sup> Free Democratic party and Democratic People's party (FDP/DVP).

<sup>d</sup> The difference between total and sum of individual items is not explainable from the available material.

Unions and the Free Democrats together would have mustered a majority without having to rely on one of the more rightist parties.<sup>38</sup>

Some revised electoral law, adopted by simple majority, might change the system for future elections. In view of the confused opinions on the justice of the various methods it is, however, doubtful whether proportional representation will be abolished, although none of the major parties proposes to push the alleged justice of proportional representation so far as to give the Communists and fascists a proportional share in the cabinets, which would be the logical consequence. Party bureaucracies, once established under proportional representation, are biased in favor of its preservation because it grants them great hierarchical powers. But it should at least be possible for a majority to agree on a clause enabling the President to summon new elections under a pure system of single-member constituencies, without proportional representation accessories, in the particular case that the Diet is being dissolved on the ground that it was unable to elect a Chancellor with absolute majority. At any rate this whole controversial issue merits serious reconsideration.

### *The Federal Diet II: Limits of Tolerance*

While dealing with electoral procedure in a rather half-hearted manner, the Basic Law has taken much bolder steps toward the goal of keeping antidemocratic extremists out of, and securing prodemocratic majorities in, the Federal Diet as well as all Laender legislatures, by tackling the fundamental problem of the limits of tolerance against intolerance. Of the four articles (9, 18, 21, and 139) dealing with this subject, Article 18 contains the broadest principle. It reads: "Whoever abuses freedom of expression of opinion, in particular, freedom of the press, freedom

<sup>38</sup> The Christian Democratic (Social) Union would have obtained 48 percent of the seats instead of only 35 percent; the Social Democrats 40 percent instead of 33; and the Free Democrats 5 percent instead of 13. The Communists would have won no seats.

of teaching,<sup>39</sup> freedom of assembly, freedom of association, secrecy of the mail, post and communication, property, or the right of asylum, in order to attack the free democratic basic order (*zum Kampfe gegen die freiheitliche demokratische Grundordnung missbraucht*) shall forfeit these basic rights. Forfeiture and its extent shall be determined by the Federal Constitutional Court."

Fascists or Communists who attack the "free democratic basic order" will therefore no longer have the right to refer to the constitutional guarantee of freedom of expression. Article 18 does not, however, directly outlaw such antidemocratic expression of opinion, or apply any sanction against it. It merely withdraws constitutional privileges, leaving any further steps to ordinary legislation. Simple legislation, that is to say, can henceforth authorize the repression of such attacks regardless of constitutional guarantees that otherwise protect freedom of expression.

This weighty exemption from constitutional guarantees may, at first sight, shock the fighters for civil liberty in the older democratic countries. Before condemning it, however, we should remember that in legislating on freedom of speech the British Parliament, too, is not bound by any constitutional requirement of qualified majorities. Any protection of free speech in Great Britain is left to simple legislation, Parliament being perfectly free, technically speaking, to deal in an expedient way with any contingency. We do not condemn this freedom of the British Parliament so long as it is not abused. Should not a written constitution also be justified in freeing legislators from constitutional limitations, at least in the fight against intolerance? Expediency and the psychological advisability of legislation against intolerance remain, of course, to be seriously considered in every case where the majority wishes to take action. But formal constitutional ties should not restrain the majority in countries where democracy has to fight for its very existence and survival against grim foes, who would not reciprocate if they should win.

<sup>39</sup> "Freedom of teaching does not absolve [the teacher] from loyalty to the Constitution" (Art. 5, par. 3).

The question whether and to what extent the basic rights are forfeited is to be decided neither by the executive branch nor by the ordinary courts but by the Federal Constitutional Court, half of whose members will be elected by the Federal Diet and the other half by the Federal Council (Art. 94). While preserving unity of practice, this provision, which seems to give a semi-political tribunal quasi-legislative functions ("extent") together with purely judicial ones, raises a number of questions, both fundamental and procedural. No political tribunal can be expected adequately to discharge the judicial functions here concerned. Only if, by composition and tenure, the Federal Constitutional Court gains a truly independent authority, comparable to that of the United States Supreme Court, can its final jurisdiction in such matters be justified.<sup>40</sup>

Even bolder than the withholding of constitutional protection from antidemocratic abuses of freedom of expression is the constitutional step taken in Articles 9 and 21 against antidemocratic associations and political parties. They are not only denied constitutional protection; they are outlawed, outright and directly, by the Basic Law itself. Article 9 rules that associations whose purpose or activities "are directed against the constitutional order (*verfassungsmässige Ordnung*) or the concept of international understanding" are illegal (*sind verboten*). And Article 21 specifies this principle with regard to political parties as follows: "Parties which, according to their aims or their members' behavior seek (*darauf ausgehen*) to impair or abolish the free democratic basic order (*die freiheitliche demokratische Grundordnung*) or to jeopardize the existence of the federal republic of Germany, are unconstitutional (*verfassungswidrig*). The Federal Constitutional Court shall decide on the question of unconstitutionality" (par. 2).

<sup>40</sup> Contrary to the new Italian Constitution (Einaudi, *op. cit.*, p. 675) the German Basic Law leaves all details, such as the number of judges, and also tenure of members that are not professional judges, to practice or subsequent legislation (Art. 94, par. 2). This makes political tampering with the Constitutional Court easy, but not inevitable. See below, section on "Loopholes."

In effect, these two articles clearly outlaw all fascist organizations and parties, and to that extent there may well be a serious effort to enforce them, at first with the positive assistance of the occupation authorities and later without it. But they likewise outlaw communist organizations, and especially the Communist party of Germany, if it can be proven that the latter continues to pursue purposes or engage in activities directed against the "constitutional order" (Art. 9) or the "free democratic basic order" (Art. 21).<sup>41</sup> Now, there can be no doubt that communist organizations do pursue such purposes and do engage in such activities in any country living under a constitution like that laid down in Bonn. If enforced, therefore, Articles 9 and 21 would imply closing down of the Communist party and of all other communist organizations in western Germany, and even the unseating of members of the Federal Diet elected on the ticket of the "unconstitutional" party. One may well wonder, however, whether these articles will actually be enforced against the Communists and whether it would be wise to do so.

In addition to the three articles mentioned, Article 139 exempts the denazification and demilitarization laws from constitutional limitations. Under these laws some people have lost their civic rights and can neither vote nor be voted for in public elections. This is, as it were, a special case under the general rule established in Article 18 regarding withdrawal of constitutional protection from antidemocratic activities. The number of persons affected by Article 139 is not great enough to play a role in the outcome of elections.<sup>42</sup>

<sup>41</sup> The different expressions used in the two clauses are baffling. But neither can be interpreted as outlawing only the overthrow of the government by force. Associations with such goals are forbidden by the general clause of Article 9 directed against all associations whose purpose or activities "conflict with the criminal law."

<sup>42</sup> Also the criminal aspects of high treason committed against the constitutional order have been treated directly in the constitution (Art. 143) rather than left to a special adaptation of the criminal code or to a special statute for the protection of the republic. Members of the Diet may be prosecuted and sued for "slandorous libel," irrespective of their general immunity (Art. 46, par. 1).

Summarizing, it may be said that the Basic Law's attack on the problem of securing a democratic majority in the legislature is likely to arouse criticism. The critics should not, however, forget to state what they would propose in order to give considerable prodemocratic forces in a country with divided loyalties and shifting majorities a fair chance to preserve some democratic form of government and to defend liberty. It is obviously inadequate in dealing with such a situation to insist that democratic principles require our being tolerant toward our opponents at any cost even if it means the end of democratic government. As a matter of philosophy, this is not what democratic principles imply. It is fully logical for democracies to fight intolerance in political matters, and to limit democratic tolerance, if necessary, to those who are willing to reciprocate. In extreme cases this would justify a prodemocratic minority of the population—if it has the stamina to do so—in reducing intolerant antidemocratic majorities of the right and left wings to minorities in the legislature by barring antidemocratic and intolerant programs in parliamentary elections, provided only that the door is always kept open so that everyone who is willing to respect the principles of political tolerance and human rights may participate fully in the democratic process. Such rule by a strong liberal-democratic minority over a split intolerant-antidemocratic majority—an open-gate oligarchy (demoligarchy) or a democratic aristocracy (demaristocracy) one might call it—is of course a borderline case, which can be imagined as operating only during a short and transitional emergency period. But in certain circumstances, realistically foreshadowed in the actual distribution of votes in the Germany of 1932, it might constitute the legitimate counterpart to the illegitimate Nazi or Soviet version of rule by intolerant minorities who bar the adherents of tolerance and human rights from the government.<sup>43</sup>

Without, therefore, raising objections in principle, one may

<sup>43</sup> See "Democracy—Challenge to Theory" (cited above) pp. 216-17, and "The New Russian Constitution," *ibid.*, vol. 4 (May 1937) p. 157.

well question the wisdom of formulations, like those of Articles 9 and 21, which leave considerable doubt as to the kind of associations that are forbidden and as to whether enforcement is intended.<sup>44</sup> Psychological and political expediency rather than democratic principle are here involved. Strong clauses that are not enforced may weaken rather than strengthen a constitution. It is here proposed not to blame the Basic Law for its clear recognition of the constitutional problem, but to postpone judgment until we learn how the new clauses will be applied in practice.

*The Federal Council (Bundesrat)*

The Federal Council—representation of the German Laender within the federal government—has been strengthened considerably. Yet it has failed to regain the full glory of concurrent legislative power which it boasted in the imperial epoch and which its United States, Swiss, and Italian equivalents enjoy. As in the Weimar period, its veto of ordinary bills may, as a rule, be overridden by the Federal Diet.<sup>45</sup> In contrast to the Weimar Constitution, however, the positive approval of the Federal Council will be required to all amendments of the Basic Law (Art. 79) and, in addition, to all ordinary laws in which the Laender have a particular interest from the point of view of their own status or administrative authority.<sup>46</sup> Consequently, the Federal Council will have full control over the preservation of the federal structure of the country and over any expansion of administrative activities in the field by the federal government. On the other hand, as has been said before, there are few actions

<sup>44</sup> While Article 21 has a special paragraph (3) stating that details shall be regulated by federal law, Article 9 has no such clause.

<sup>45</sup> This will require only an absolute majority in the Diet. A two-thirds majority of those actually voting, which was always necessary under the Weimar Constitution, will henceforth be needed only if the Federal Council itself has mustered two-thirds of its votes for the veto. A conference procedure on the American model has been introduced to precede the veto (Art. 77, pars. 2, 4).

<sup>46</sup> See especially Arts. 84, pars. 2, 3, 5; 85, pars. 1, 2; 87, par. 3; 106, pars. 3, 4; 107; 108, pars. 3, 5; also 119.

the Federal Diet cannot take with the approval of a majority in the Federal Council.

The fact that, furthermore, the power to issue emergency decrees has passed from the President to the Council (see above) will greatly increase its authority and potential significance as a power behind the throne. For, whenever there is a conflict between the Chancellor and the majority of the Diet, without the latter being willing or able to overthrow him because of inner dissension, the Chancellor will have a choice whether he is going to work with the Diet or with the Federal Council. There may even develop the situation, not sufficiently considered it seems, that a political party which fails to control a majority in the Federal Diet but can muster one in the Federal Council may try by some maneuver to bring emergency legislation by the Federal Council into play.<sup>47</sup>

Composition and procedure of the Federal Council have retained much of their traditional character. As in olden times, delegates appointed by each Land government will cast the votes of their respective Land en bloc. There was a strong movement in favor of a shift to the senatorial system, under which senators are elected directly by the people and are free to express their personal opinions. This would have served to counteract certain bureaucratic tendencies inherent in the German system, but it would have weakened the Laender governments' control of the federal government. It was a question simply of what was more important—debureaucratization, or preservation of federalistic control. The long tradition and, on the whole, favorable record of the German Federal Council as a watchdog for Laender interests and a rallying ground of their administrative experiences, together with the present boom of state rights ideologies, finally led to the maintenance of the traditional system with, however, the modification that appointed

<sup>47</sup> This was clearly seen by United States representatives and pointed out both to the Germans and the Military Governors, according to information from Professor Hans Simons, then Chief of Governmental Structures Branch, Civil Administration Division, OMGUS.

members of the Laender cabinets—not the Laender themselves, as under the constitutions of 1871 and 1919—will be the “members” of the Federal Council (Art. 51) and that the debates in the plenary meeting must henceforth be conducted, and the votes cast, by them rather than by officials with civil service status. Yet officials may still be sent into the committees, in which the main work was always done in the past.<sup>48</sup>

What will distinguish the Federal Council from its predecessors much more than the changes in power and procedure is the absence of Prussia and the concomitant disappearance of the great differences in voting power, which amounted to seventeen to one in imperial times and thirteen to one in the Weimar Republic.<sup>49</sup> While differences in votes have not been completely eliminated, they have been reduced to a minimum. Each Land is to have at least three votes, Laender with more than two million inhabitants are to have four, and those with more than six million, five (Art. 51, par. 2).<sup>50</sup> No Land, then, has even twice the voting power of any other. To illustrate, Bremen and Hamburg together have more votes in the Federal Council than either North Rhine-Westphalia or Bavaria, just as Nevada and Arizona together have more votes in the United States Senate than either New York or Pennsylvania.<sup>51</sup>

<sup>48</sup> Although the Basic Law has refrained from declaring explicitly that the delegates are bound by instructions from their cabinets, loyal cooperation with their home governments, which appoint and dismiss the delegates, is to be expected for obvious reasons, the more so because the votes must be cast uniformly for each Land.

<sup>49</sup> For the distribution of votes from 1815 to 1933 see *Federalism . . .* (cited above) pp. 157 ff.

<sup>50</sup> There are 43 votes at present (see Table 1 on their distribution). The first set of delegates from Bavaria were all members of the Christian Social Union, those from South Baden of the Christian Democrats, and those from Schleswig-Holstein of the Social Democratic party. The delegations from the other eight Laender were mixed according to the coalition character of their cabinets.

<sup>51</sup> This is a striking contrast to the composition of the Federal Diet, where North Rhine-Westphalia is represented by more than one-fourth of the 402 members, Bavaria by almost one-fifth, and Lower Saxony by one-seventh. Thus, these three Laender together elected more than 60 percent of the members, while the other eight elected less than 40 percent together and less than 10 percent individually. See Table 1 for details.

The Federal Council will be presided over by its own annually elected president rather than by a federal cabinet member, as it was in the past. Membership in it is sure to become a distinguished and coveted office.<sup>52</sup>

*Emergency-proof Minimum Standards of Human Rights*

With the control of the executive branch by the legislature fully secured and all possible steps taken to ensure prodemocratic majorities in the legislature, it remained for the new Basic Law to establish a last line of defense in order to protect the individual from encroachment by the legislature itself, in case either undemocratic forces should be able to win majorities by breaking through, or circumventing, the primary defenses, or democratic forces should allow themselves to be misled into undemocratic action. The great importance attributed to this function of the constitution<sup>53</sup> is emphasized by the fact that the guarantees of human rights, which had formed the second part of the Weimar Constitution, were promoted to first place in Bonn. But they still suffer, as they do in most constitutions for almost unsurmountable reasons,<sup>54</sup> from numerous clauses permitting limitation by ordinary legislation.

Thus Article 2, protecting every person's life, physical inviola-

<sup>52</sup> The first Federal Council elected as its president Karl Arnold, minister-president of North Rhine-Westphalia, rather than the Bavarian minister-president, whose choice had been expected. This fact aroused some resentment, not only in Bavaria, which dislikes playing second fiddle again in the Federal Council, but also in other Laender, since both Adenauer and Arnold come from the same Land.

<sup>53</sup> On the nature of this problem see the sections "Undemocratic Majorities" and "Amendment-proof Minimum Standards" in my article, "Democracy—Challenge to Theory" (cited above) p. 195.

<sup>54</sup> See the good presentation of these reasons in H. Lauterpacht, *An International Bill of the Rights of Man* (New York 1945). Mr. Lauterpacht, however, overlooks the possible answer of minimum standards; see my review in *American Political Science Review*, vol. 39 (December 1945) p. 1192. The Universal Declaration of Human Rights of December 10, 1948, has wrestled with the same problem unsuccessfully, and it appears that the Covenant of Human Rights will be hardly more fortunate. The first ten amendments of the United States Constitution are no exception to the rule, because they do not bind the state governments directly.

bility, and freedom, declares that these fundamental rights may be "interfered with (only) on the basis of a law." But how, if that law pursues totalitarian designs? Article 3, in turn, grants equality "before the law." What if the law treats all foes of a totalitarian government with equal brutality? Article 5, in establishing freedom of speech and of the press (and, as a novel expansion, also freedom of news reporting through radio and motion pictures, and the right to instruct oneself from generally accessible sources), adds that these rights "find their limitations in the stipulations of the general laws." Again, what if the general laws are antidemocratic in character? Article 11, guaranteeing freedom of movement, states that this freedom may be restricted by legislation for specifically enumerated reasons, among which is the general one "to prevent criminal acts." What if a majority declares the fight against fascism or communism a crime and authorizes the police to limit the movement of opponents by putting them in concentration camps, to "prevent criminal acts"? Article 13, guaranteeing the inviolability of the home, grants exceptions "on the basis of the law" in order to "avert common danger (*gemeine Gefahr*) or mortal danger to individuals." What if the law permits searching of homes to protect fascism or communism, and finds common danger in any attempts to resist or overthrow them?

Obviously, then, all these resounding guarantees protect individual rights only so long as the legislature itself has a majority willing to protect them. To meet the danger of encroachments by undemocratic majorities, or by majorities that are not vigilant enough, the Bonn Basic Law has established several principles in such a way as not to permit any legal interference, even in emergencies. These principles have thus been made quasi-absolute, or emergency-proof, in constitutional terms, at least as long as they are not altered by formal amendments to the Basic Law. Some have been made amendment-proof as well, as we shall see later.

There are now in western Germany the following eight things,

in particular, which, short of an amendment, majorities can by legislation neither do nor authorize to be done in technically valid forms. First, whenever legislation limits a basic right it may in no case touch (*antasten*) its essential content (*Wesensgehalt*) (Art. 19, par. 2). Second, in no case may legislation discriminate against or in favor of anyone because of his descent, race, language, homeland and origin, faith, or religious or political opinions (Art. 3, par. 3).<sup>55</sup> Third, in no case may a law permit forced labor to be imposed except in the event of imprisonment ordered by the court; police applying forced labor without court warrant, as in National Socialist or Soviet camps, would be acting unconstitutionally (Art. 12). Fourth, no criminal legislation can be made retroactive (Art. 103, par. 2). Fifth and sixth, no legislation can validly permit the death penalty (Art. 102) or the physical or mental ill-treatment of detained persons (Art. 104, par. 1). Seventh, only the judge has authority to decide on the legality (*Zulässigkeit*) and continuation of detention; without judicial warrant the police may keep no one longer than the end of the day following the day of arrest (Art. 104, pars. 2 and 3). Eighth, some relative of the detained person or a person enjoying his confidence must always be notified forthwith of the judicial decision permitting detention (Art. 104, par. 4).

These eight unconditional prohibitions, and several others,<sup>56</sup> apply not only to normal legislation but also to emergency legislation in the technical sense (see above, section on the President, and Art. 81, par. 4). Should a majority want to encroach on these standards by legislation it would, therefore,

<sup>55</sup> A transitional period, to expire March 31, 1953, has been provided for in order to effect the equal treatment of the sexes (Art. 117).

<sup>56</sup> The following rights and duties, too, are unconditionally protected from any interference by legislation, ordinary or emergency: freedom of conscience and undisturbed practice of religion (Art. 4); the right of the parents to decide on the religious instruction to be given their children (Art. 7, par. 2); the right to a fair compensation in cases of expropriation or socialization (Arts. 14, 15); the right of petition (Art. 17); the priority of international law over domestic law and the principle that its general rules create immediate rights and duties for individuals (Art. 25); and the unconstitutionality of any actions designed to disturb the peace or to prepare for aggressive war (Art. 26).

have first to pass a constitutional amendment to lift the ban. This is no complete barrier, however. Amendments under the Basic Law require two-thirds majorities in both chambers; if these majorities are available, amendments can be quickly enacted. Once the ban is lifted, any brutality might be validly authorized by law, as when the presidential emergency decree of February 1933 and the Enabling Act of March 1933 freed the German police from the guarantees of human rights under the Weimar Constitution—validly, that is, so long as judges and administrators cling to the doctrines of legal positivism, under which they are bound in all their official actions by technically valid laws irrespective of ethical standards. Only where the positive law explicitly authorizes the judge to declare legislation invalid with a view to ethical standards, as in the due process clauses of the United States Constitution, is he permitted to do so, according to legal positivism.

Bitter experience has caused the framers of the new Basic Law to knock the bottom out from under this sort of legal positivism by putting at the very head of the Basic Law the following Article 1:<sup>57</sup>

"(1) The dignity of man is inviolable (*unantastbar*). To respect (*achten*) and protect it is the duty of all governmental power (*staatliche Gewalt*).

"(2) The German people therefore acknowledges (*bekannt sich zu*) inviolable (*unverletzlichen*) and inalienable human rights as the basis of every human community (*Gemeinschaft*), of peace and of justice in the world.

"(3) The following basic rights shall be binding as directly valid law on legislation, administration and judiciary (*Rechtssprechung*)."

The novelty of this article is not, of course, that the constitutional bill of rights is made directly applicable to individual

<sup>57</sup> The emergence of a solemn reference to God ("conscious of its responsibility before God and men") in the Preamble of the Basic Law—in contrast to those of the constitutions of both 1871 and 1919—is also noteworthy in this context.

cases without the intermediary of ordinary legislation; that was also true in the Weimar Constitution and is still so in the United States. Nor that the federal bill of rights limits state and local agencies as well as federal ones. Whereas this is not true of the first ten amendments to the United States Constitution, it was so in the Weimar Constitution. The novel feature is to be found rather in the *constitutional* recognition that basic rights are essentially inviolable and inalienable irrespective of the constitution itself. This at least is new in comparison with the Weimar Constitution; the due process clause in the United States Constitution has been practically interpreted in a similar sense.

The technical importance of this constitutional acknowledgment is underlined and increased by two factors, namely, (1) that it has not been relegated to the Preamble, as in the new French Constitution,<sup>58</sup> but is incorporated in the first substantive article, and (2) that it has been declared technically unamendable. For Article 79, paragraph 3, reads: "An amendment to the Basic Law by which the organization of the federation into Laender, the basic cooperation of the Laender in legislation, *or the basic principles laid down in Articles 1 and 20* [*italics mine*] are affected is inadmissible (*unzulässig*)."

In these circumstances there can be no doubt that henceforth the German judge is authorized by the constitution—the positive law—to deny recognition to any governmental order that blatantly violates human dignity or those inviolable and inalienable human rights that derive from it. True, the ordinary courts cannot themselves declare a statute unconstitutional; if they think it is, the regular judge must put the question before the Federal Constitutional Court (see above, section on the Federal Diet). The latter, however, must invalidate the law if it violates

<sup>58</sup> In distinction from the earlier draft, the so-called Cot Constitution, which was rejected in the popular referendum of spring 1946. There an attempt had also been made to establish some emergency and amendment-proof principles, but insufficient for the solution of our problem. See the end of "Democracy—Challenge to Theory" (cited above).

those standards, whatever majorities have passed it, and even if the forms of a constitutional amendment have been employed.<sup>59</sup>

Nor have the regular courts gone completely unstrengthened in their own jurisdiction. Should inhumane orders be given, not by formal statute but without legislative basis by some police agency or in a presidential decree, it seems clear that the judge need not lay the matter before the Constitutional Court. In that case, he is fully authorized to deny validity. Furthermore, he must now be considered free to interpret any statute, especially one that delegates summary powers, on the assumption that it was not intended to commit or authorize encroachments on inviolable rights, unless it does so explicitly and unmistakably.

The only other specific article declared amendment-proof, Article 20, establishes the principle of separation of functions and, in addition, declares all legislation limited by the constitution, and all activities of the executive and judicial branches limited by "Law and *Recht*." Vague as these stipulations are, especially because of the lack of precision in the meaning of the German term *Recht*,<sup>60</sup> the ban placed on their amendment adds further emphasis to the right and duty of the judiciary and of the officials to resist inhumane usurpations of power whether by individuals or by majorities.

Thus the Basic Law has tried to overcome the shortcomings of legal positivism by using its very technique—stipulation

<sup>59</sup> If the judge fails to put the question before the Constitutional Court there remains to the individual only an appeal to the higher ordinary courts in the hope that they will do it. An Italian constitutional law of January 31, 1948, prescribes that the bench *has* to place the matter before the Constitutional Court when the question of unconstitutionality is raised and not held by the judge to be "manifestly unfounded." See Einaudi, *op. cit.*, p. 675.

<sup>60</sup> The customary translation of *Recht* by "law," which is also used in the official translation of the Bonn Basic Law, misses the point here. Not every law (*Gesetz*) constitutes *Recht*. "*Recht* is the aggregate of those actualities that are meant [intended] to make justice real" (Gustav Radbruch, *Vorschule der Rechtsphilosophie*, Heidelberg 1948, p. 32). Laws that do not even strive after justice are not *Recht*. "Hence a law that refuses to recognize human rights for certain human beings is not *Recht*" (*ibid.*, p. 33). See also Radbruch, "Gesetzliches Unrecht und übergesetzliches Recht," in *Süddeutsche Juristenzeitung* (August 1946).

through the positive law, namely, the constitution. Had clauses like these been included in the Weimar Constitution, Hindenburg's decree of February 28, 1933, which suspended the basic rights and thereby technically authorized the unlimited detention of arrested persons by the police without judicial warrant, as well as their forced labor and cruel treatment in concentration camps, would not have been valid, even with the presidential power to issue emergency decrees otherwise intact. The judiciary would also have had the legal basis for nonrecognition of cruel orders issued after the Enabling Act by constitutional amendment had given Hitler's cabinet dictatorial powers.

Theoretical objections have sometimes been raised against declaring constitutional clauses unamendable, on the ground that no generation is entitled to bind subsequent generations and, furthermore, that majorities of people wanting a different constitution will not be deterred by formal prohibitions. These objections do not, however, refute the technical value of amendment-proof clauses in the fight for stability, any more than they refute the value of withdrawing certain rights from disposal by simple majorities through constitutional guarantee. A complete ban placed on certain amendments, while not necessarily enforceable in all circumstances, may still make changes considerably more difficult to obtain. Not only does it offer strong arguments against contravening amendment bills during the legislative process. It puts the judges and civil servants, sworn in on the constitution, under professional obligation to refuse obedience to amendments passed in contravention of the ban. Whether it is ethically justifiable to outlaw specific changes in advance manifestly depends on the nature of the principles so privileged. It is ethically more justifiable to bind future generations to the principle that torture and other forms of cruelty should never be permitted by legislation, and that human dignity always be respected, than it is to bind them to the federal form of organization, as in Article 79 of the Bonn Basic Law, or to the equal representation of unequal states in the

Senate, as in the United States Constitution, or to the republican form of government as in the French Republic.<sup>61</sup>

### *Loopholes*

While most of the gaps that have been revealed to exist in the constitutional protection of liberty and justice against modern methods of totalitarian attack have been effectively closed in Bonn—in that perennial process of plugging holes, one by one, in the control of despotic power, which made its greatest progress in seventeenth-century England—there remain three loopholes, which merit close attention. Two of them are available to simple majorities in the legislature, and the third to a two-thirds majority.

The first loophole makes it possible for a simple majority of the Diet to reintroduce concentration camps. The fact that no one may be detained more than a day unless the regular court has decided on the "legality" of his detention, while guaranteeing that the case will be brought before the judge, does not equally guarantee the freedom of the judge to release the arrested person. For the judge must decide on the legality of the detention in accord with the law as it stands, unless he has sufficient reason to question the law's regard for inalienable rights and human dignity. If legislation, for example, permits detention whenever the minister of the interior or a similar functionary designates a person as "dangerous," then detention based on such legislation is technically "legal," and the judge can do no more than say so and confirm the legality of a detention based on the ministerial order.

This loophole in habeas corpus procedure was moderately used in Great Britain during World War II to keep a small number

<sup>61</sup> The technical objection, sometimes raised, that the clause forbidding amendment of another clause may itself be amended under the general amendment procedure of the constitution is inconclusive, because constitutions with such clauses make it reasonably clear that their own amendment procedure shall *not* apply to these clauses. The latter can be amended only by overthrow of the constitution.

of British fascists and other politically dangerous persons interned. In dealing with applications for writs of habeas corpus in these cases the British judges found they had to ground their decisions on the fact that a statute and regulations based on it—the Defense (General) Regulations, 1939—had authorized the Home Secretary to order persons of a certain description to be interned if he considered them dangerous for public security and that, therefore, the courts, whenever the Secretary had issued such an order in good faith, could not but recognize the legality of the internment, since it was not the function of the court to act as a court of appeal from the exercise of his discretion by the Home Secretary.<sup>62</sup>

Likewise, in the United States, Americans of Japanese descent were interned on the basis of a statement by the military authorities that this was necessary for the security of the United States, and here, too, the judges refused to free the interned persons on grounds of habeas corpus.<sup>63</sup>

What has thus been done on a relatively restricted scale during the war in countries like Great Britain and the United States, historical standard-bearers of the habeas corpus principle, may be done wholesale in peacetime in any country that grants the judge merely the power to decide on the "legality" of detentions. Needless to say, when in the Soviet Union a law of 1934 provided that a board established under the commissar (now min-

<sup>62</sup> *Rex v. Secretary of State for Home Affairs—Ex parte Lees* (court, October 1940, refused application for writ of habeas corpus) 57 *The Times Law Reports* 68; [1941] 1 K.B. 72. *Greene v. Secretary of State for Home Affairs* (House of Lords, sitting as a court of appeals, November 3, 1941, dismissed appeal regarding refusal of writ and declared that not even an affidavit or other proof from the side of the Home Secretary was required) 58 *The Times Law Reports* 53. *Liversidge v. Anderson* (House of Lords, November 3, 1941, dismissed claim for damages based on "false imprisonment") 58 *The Times Law Reports* 35. But see also Lord Atkin's sharp dissent in the *Liversidge* and *Greene* cases (58 *The Times Law Reports* 39).

<sup>63</sup> *Korematsu vs. United States*, 320 U. S. 81 (1943). But see the violent dissent by Justice Murphy who called the military order "one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law."

ister) of the interior may intern any person whom it considers politically "dangerous,"<sup>64</sup> this law was respected by the Soviet courts. If a similar law should be passed by an undemocratic majority under the Bonn Constitution, what could the judges do but apply it? While the Basic Law forbids forced labor in absolute terms, it does not enjoin the legislature in equally absolute terms from authorizing the internment of persons that are considered "dangerous," provided that no forced labor is connected with the internment. On the contrary, Article 11, paragraph 2, expressly admits legislation that in order to "prevent criminal acts" limits free movement; and what is criminal is again to be decided by legislation. This opens up the same loophole for antidemocratic majorities that Hitler's majority used when it designated all acts against the National Socialists as criminal acts and authorized the police to restrict by internment the free movement of persons who were suspected of being able to commit such acts.

There are only two alternative ways in which this difficulty can technically be met. Either the constitution must *expressis verbis* declare that preventive custody is illegal in all cases and can never be validly authorized by any legislation, except in the event of contagious diseases and insanity under special controls; or the constitution must, in absolute language, state minimum standards for the decent treatment of persons held in preventive custody, if that institution should ever be used in an emergency, and maximum terms for their detention. The regular courts and public employees must be enjoined by the constitution to enforce these rules, irrespective of what they are told by the government in power.

The second loophole is the Federal Constitutional Court's monopolistic power to decide on all questions of constitutionality, with no details fixed in the constitution regarding the Court's composition, except that the members, whose number has been

<sup>64</sup> See John N. Hazard, "The Soviet Union and a World Bill of Rights," in *Columbia Law Review*, vol. 47 (November 1947) pp. 1095, 1107.

left open, will be appointed by simple majorities of the two houses. Undemocratic majorities, therefore, could easily pack the Court with fascist members in a technically valid manner.<sup>65</sup>

The third loophole is offered by amendments of the enabling act type. If passed without amending the constitution an enabling act cannot remove the emergency-proof standards under the Basic Law. If, however, it is passed in the form of an amendment, most of these standards are no longer protected. Now, history has clearly shown that the sweeping constitutional amendment, which gives all power to one man or one group, is the most dangerous device for the establishment of modern dictatorships. Enabling acts of this kind have repeatedly been carried by great majorities in periods of extreme tension, distress, terror, or enthusiasm.<sup>66</sup> Without enumerating any odious powers, which the legislature—or the people in plebiscites—would perhaps refuse to grant, amendments of this type technically do grant such powers, unless they take pains to exclude them specifically from the general transfer of powers,<sup>67</sup> or the Constitution has declared in advance that such powers can never be transferred even by amendments. To cope with this particular danger democratic constitutions should explicitly enumerate certain minimum standards of liberty and justice, especially regarding protective custody (see above), which cannot be interfered with validly even by amendments. The amendment-proof clauses of the Basic Law are much too vague. Several of the emergency-proof standards should, therefore, be made amendment-proof as well.

<sup>65</sup> The same loophole exists in the United States, cleverly used in Sinclair Lewis' *It Can't Happen Here*. This, however, is no excuse for the gap in the German Basic Law, since the United States is not faced with numerically strong antidemocratic forces.

<sup>66</sup> France, 1799, 1802, and 1804 (Napoleon I), 1851 (Napoleon III), and 1940 (Pétain); Germany, March 1933 (Hitler); not to speak of South America.

<sup>67</sup> As did the House of Commons in 1539 when Henry VIII prevailed upon them to pass the Statute of Proclamations, great model enabling act. See C. H. McIlwain, *Constitutionality, Ancient and Modern* (Ithaca 1940) p. 109, and my *Prelude to Silence* (cited above) p. 100.

*Debureaucratization*

Summing it up, it may be said that the Bonn Basic Law has attacked the main problem of a democratic constitution for a country divided between prodemocratic and antidemocratic loyalties and ideals, with expert knowledge, courage, and firm determination of purpose.<sup>68</sup> The three loopholes mentioned in the preceding section will not become dangerous, so long as the legislature remains under the control of vigilantly prodemocratic majorities. There remains, however, one other serious question to be raised regarding a collateral issue—the problem of debureaucratization.

Article 33 of the Basic Law contains in its paragraphs 4 and 5 two prescriptions regarding public employees that simply do not belong in a constitution. Paragraph 4 ordains that the performance of functions of governmental authority (*Ausübung hoheitsrechtlicher Befugnisse*) is, as a rule, to be left to public employees who hold a public law status with regard to questions of duties and loyalty (*die in einem öffentlichrechtlichen Dienst- und Treueverhältnis stehen*). This excludes the treatment of public service like private employment. Though there are good arguments in favor of the recognition of a public law status for public employees (a question too complicated to be discussed here in detail), the constitutional recognition of that kind of a status precludes any further discussion of this subject and serves to bestow upon the German officials once more the privileged character of what Americans call "sacred cows."

More serious, paragraph 5 prescribes that the legal complex of public service must be regulated "with due regard to the traditional (*hergebrachten*) principles of the professional civil

<sup>68</sup> The Military Governors' "Letter of Approval" of May 12, 1949, complimented the members of the Parliamentary Council "on their successful completion of a difficult task performed under trying circumstances, on the manifest care and thoroughness with which they had done their work and on their devotion to the democratic ideals toward the achievement of which we are all striving." The Basic Law, the letter said, "happily combines German democratic tradition with the concepts of representative government and a rule of law."

service (*des Berufsbeamtentums*).” This means in fact that once more the civil servants have received a constitutional guarantee for the preservation of “traditional principles,” or in other words, that they may denounce as unconstitutional any new civil service laws enacted by democratic majorities whenever the officials think these laws violate traditional principles. Many of the traditional principles of the German civil service were quite good, indeed, and some were even exemplary; but others were bad, and whatever they were, it is not the business of a constitution, at least not of a democratic constitution, to grant civil servants a special status beyond the reach of reason and law. If it was the intention merely to secure equal treatment of these questions in all of the Laender, it would have been sufficient, and quite appropriate, to grant federal legislation the power to deal with them.<sup>69</sup> But it was unwise to deal with them directly in the constitution.

Debureaucratization of Germany, after centuries of bureaucratic tradition, remains a serious problem. The unfortunate denazification laws, putting all emphasis on punishment, tied up the question of unsuitability for democratic office most preposterously with that of punishment for essential support given the Nazi regime and, consequently, made everybody who was not actually punished—and relatively few were—once more suitable for democratic office, including thousands of active pre-1933 National Socialists and all the little Hitlers and Papens.<sup>70</sup> True, the Basic Law has reopened the issue in Article 132, which grants the authorities the right to dismiss or demote officials as unsuitable. But this right has been limited to the short period of six months after the first meeting of the Federal Diet, so that it expires on March 7, 1950; and a special paragraph assures all those officials that did not fall into any of the special categories established in the denazification laws that this right will be used against them only “if an important cause is found” in

<sup>69</sup> This has actually been done by Art. 75, no. 1.

<sup>70</sup> See my article, “Civil Service Reform in Germany: Problems and Suggestions,” in *Personnel Administration*, vol. 9 (January 1947) p. 1.

the individual concerned. The new ministers will have neither the time nor the heart to go into this matter with the necessary thoroughness within such a short period. The German officialdom, therefore, must be expected to remain much as it was before—by no means generally pro-Nazi, to be sure, but sprinkled with Nazi sympathizers and more strongly interspersed with bureaucrats who, while contemptuous of National Socialism, are contemptuous of democracy also and inclined to look down on people different from themselves.<sup>71</sup>

In this area much remains to be done. Without breaking up the traditional career service completely, it should be mixed systematically with candidates recruited from the outside in the American way through free competitive examinations. Some reasonable proportion of vacancies in each group, say one-third, should be thrown open to such recruitment. The lawyers' monopoly in the higher career service should be replaced by the broader options offered career candidates in examinations under the British system. The unfortunate ratio between relatively high pensions and relatively low salaries, which leads the civil servants into a kind of pension-servitude apt to break their moral backbone, should be corrected. But could it be said that these and other necessary reforms would be in line with "traditional principles"? <sup>72</sup>

<sup>71</sup> This is not meant to say that *all* German officials, or even the majority, are of this type. But many are, and it will require a great effort within the civil service to free itself of this unwise and unpopular attitude.

<sup>72</sup> The Military Government Law No. 15 on "Bizonal Public Service" goes a long way toward reform, including recruitment of outsiders and abolition of the lawyers' monopoly. Its Article 3 reads: "Allegiance to the principles of democratic government, evident in the overall conduct of the public servant, shall be a prerequisite for employment by the [bizonal] Administration. Apart from this, political convictions shall not be taken into consideration." And Article 27: "The official shall be under obligation, both on and off duty, to strive by positive efforts for the promotion of the democratic order of the community." These principles, too, are hardly "traditional," however, nor perhaps even quite realistic if applied to every postman, railroad engineer, and accountant, unless one wants to foster a lot of treacherous lip service. Law No. 15 was imposed, because the Bizonal Administration was not ready to accept it. It has now been provisionally extended

Another halfhearted compromise concerns officials as candidates for the Federal Diet.<sup>73</sup> Former German parliaments had always counted numerous officials among their members, in conflict with western ideas about separation of powers. Allied warnings were unable to persuade the Germans that public employment and membership in legislatures should be declared constitutionally incompatible. But the Basic Law did at least authorize legislation to do so (Art. 137). When the electoral law limited the incompatibility clause to federal employees—a category which could not yet exist at the time the first election was to be held—the three Military Governors issued a law extending incompatibility to all public employees, federal, state, and local. Even so the old practice has been little affected, because the officials had to quit active service only after being elected—that is, before accepting election, not during the campaign—and German law could give them the right to reinstatement after termination of their membership in the legislature so that in the meantime they would simply have inactive status (*Wartestand*). Actually, therefore, little has been changed in making candidacy of officials for the legislature possible and attractive. The number of former officials and civil servants holding inactive status in the new Federal Diet is considerable.

While it would be desirable for the German people to enjoy more democratic thinking and less bureaucratic conceit in their officialdom, shortcomings in this respect cease to be of primary importance if the political leadership of the country is truly democratic and continues to be so over a long period of time. Then the undesirable bureaucratic inheritance may be gradually overcome and the many good qualities of the German civil service assert themselves the more happily.<sup>74</sup>

to the new federal government by order of the three High Commissioners (September 12, 1949) until adequate civil service laws shall be passed by the Federal Diet.

<sup>73</sup> I am indebted to Dr. Hans Simons for information on the action of the Military Government in this matter.

<sup>74</sup> It should be remembered that France, too, needed some thirty years or more after 1870 to republicanize her civil servants.

*Conclusion and Outlook*

With the geographical split of Germany continuing to be a constant source of irritation and actual harm to both sides, it would be natural for the new federal government to negotiate with the East German government for the establishment of a federal government for the whole of Germany. While either side refuses to accept the other's constitution for itself, both could still try to set up an overall government at least for certain affairs, such as customs, currency, transportation, and telecommunication. There is no logical necessity for all the institutions and services that have been placed under central control in West Germany to become centralized for the whole of Germany, and both sides may hesitate to consent to such a complete merger so long as their political complexion differs as much as it now does. This idea might lead to forming a German federal government on two levels—with two tighter unions at the lower level (West Germany and East Germany, respectively) and a much looser federation at the higher level.

But the idea of a higher level federation is by no means limited to an eastern direction and to German Laender. The German constitutional problem cannot be fully solved without Europe, nor the European constitutional problem without Germany. Germany's membership in a European federation would offer her neighbors a permanent share in her control, and Germany a new start in good faith toward a democratic, nonmilitaristic future. In its Article 24 the Basic Law has included the strongly worded offer that Germany is willing to abandon sovereignty rights to a supranational federation. It says, first, that Germany's federal government shall have the power, through an act of simple legislation, to transfer sovereign rights to international institutions (par. 1); second, that the federal government may join in a system of mutual collective security and, in so doing, *will* consent to limitations of its sovereign rights (par. 2); and third, that Germany will accept a comprehensive system of obligatory international arbitration (par. 4).

This offer, tendered by men who in their new constitution have clearly shown their own ardent opposition to totalitarian principles, should not be lightly disregarded. Here, perhaps, is the only democratic alternative to fascism, communism, or chaos.<sup>75</sup>

<sup>75</sup> Regarding problematic details of Germany's inclusion in a European federation, may I refer to my article, "European Federation—The Democratic Alternative," in *Harvard Law Review*, vol. 55 (February 1942) p. 561. Additional recommendations, still relevant, will be found in my papers, "Limited-Purpose Federations," in *Social Research*, vol. 10 (May 1943) p. 135, and "Distribution of Powers between an International Government and the Governments of National States," in *American Political Science Review*, vol. 37 (October 1943) p. 862, especially Sec. II.

NOTE—A new official publication, *Documents on the Creation of the German Federal Constitution*, OMGUS 1949, published after this paper had gone to press, contains a convenient compilation of Allied and German documents relating to the Basic Law, including a much improved "revised translation" and an analysis of the Basic Law's various progressions from the Chiemsee proposals to the final text.

## THE BRITISH DEVALUATION

BY ALFRED KÄHLER

THE devaluation of thirty currencies following the announcement made by Sir Stafford Cripps on September 18, 1949, has highlighted the difficulties encountered by the western world in rebuilding its economy. The immediate cause for the devaluation was Britain's alarm over the decline of her exports to the United States and the drain on her gold and dollar holdings, which had become particularly severe since the second quarter of 1949. The other countries of the European Recovery Program had held their own for some time, but only because of substantial assistance from the United States. Fundamentally, they were in no better position than England. On further analysis their dollar problems may indeed appear more serious than those of Great Britain, since their raw materials resources are much smaller than those of the wide sterling area.

The United States, against which the devaluation was mainly directed and which at any previous period of her history would have feared the loss of her markets, has accepted the currency depreciations not only without misgivings but with positive approval. This country is convinced of its comparative strength and is more concerned about the possible failure of devaluation to restore the foreign exchange solvency of the soft-currency countries than about eventual depressive effects upon her economy. Dollar shortages and foreign need for American aid are feared to be persistent realities that can be only slightly affected by devaluation. This view of the situation may be too pessimistic, however, since devaluation is not the only means applied in the restoration and integration of the world economy and is expected to cure only one particular ill which may not even be the most difficult to treat, although it is incurable until other deficiencies have been overcome.

The task of reconstructing a free world economy, in the framework of which devaluation must be discussed, appears to comprise four main problems, all highly interdependent yet distinguishable. First, the productive capacities of the various peoples must be sufficiently restored to enable them to live on the value of their products. Second, the inflation of their monetary and financial systems must be sufficiently reduced or neutralized to prevent aggregate demand from exceeding aggregate supply at existing prices. Third, the productions of the various countries must be so adjusted that they add up to a supply which corresponds to the proportional distribution of demand for the various types of products. And finally, the national price levels must be so adjusted as to allow imports and exports and their balance.

## I

Obviously, the restoration of physical outputs to certain minimum levels is a necessity and until this is achieved one-way grants must help to balance the international accounts. The Marshall Plan is serving this purpose, with the aim not only of enabling the people to maintain their status quo but also to raise their productive capacities to self-supporting levels. Despite all the discouraging reports, it may be said that this part of the reconstruction program is not developing unfavorably. Industrial production in all Marshall Plan countries, with the exception of Austria, Greece, and Germany, has exceeded prewar levels.

Great Britain, the target of so much present-day discussion and criticism, reported for the first quarter of 1949 a level of production and construction activity 32 percent above that of 1938.<sup>1</sup> Also, her national income has risen, since her money income has more than doubled while her cost of living has gone up only 75 percent above the prewar figure. It is true that to the British consumer conditions do not look so encouraging as

<sup>1</sup> Economic Cooperation Administration, *Fourth Report to Congress* (Washington 1949) p. 96.

these figures suggest, because a greater percentage of the national income is going into nonconsumptive channels than before the war. Whereas in 1938 the government consumed 16 percent of the product, in 1948 it absorbed 20 percent, not counting transfer payments. The formation of new capital, which in 1938 accounted for 7 percent of the national dividend, laid claim to 11.5 percent of the total in 1948. Even increases in foreign investments and the repayment of sterling balances have been working against the British consumer, though it could be said that the latter amounts are offset by receipts under the Marshall Plan and by drawings upon her gold reserves.

The less favorable position of the British consumer does not therefore necessarily invalidate the assertion that the country's production has recovered reasonably well, though undeniably a further increase in output would materially ease the solution of many problems. Nor is the present financial plight of Great Britain directly attributable to insufficient production or to her people's living beyond their means. In fact, during the year ended July 31, 1949, the British people not only stayed within their current income, but increased their national capital considerably; they also paid back foreign sterling balances and added to their foreign capital holdings greater amounts than they received under the Marshall Plan.<sup>2</sup>

Since restoration of production has made significant progress, it might be assumed that the closing of the inflationary gap within the various countries could now be easily achieved. This is too optimistic an approach. The European countries had two more years of war inflation than the United States and their backlog of consumer demand accumulated over a correspondingly longer period. Their productive power, on the other hand, has always been smaller than that of the United States and never so balanced. These factors make it extremely difficult to close the inflationary gap and return to a ration-free market economy.

<sup>2</sup> Cmd. 7793. *United Kingdom Balance of Payments 1946-1949* (London 1949) Table IV.

England's public debt, for instance, is two and a half times her national income, while the American debt exceeds one year's income by only 10 percent. The power of the British consumer and investor to outbuy the current supply is therefore substantially greater than it ever was in the United States after the war. England could, of course, restore the equilibrium between supply and demand either by allowing prices to rise or by blocking a part of the country's monetary assets. Neither of these ways is attractive and England tries to avoid them by collecting taxes in considerable excess of current spending. But even substantial surpluses are small in comparison with the potential money supply, and their deflationary effects would be felt only gradually.

So long as a country has an inflationary gap requiring it to ration its commodities, that long will it also be required to ration hard currencies since these are titles to commodities. To speak, however, of a dollar gap under these conditions is misleading, though dollars are as scarce as the home-produced goods. But their scarcity, instead of being a result of some imbalance between imports and exports, is merely a part of the general scarcity of commodities in comparison with the overexpanded monetary purchasing power.

The term "dollar shortage" is meaningful only when a country's aggregate demand for commodities does not exceed its aggregate supply but concentrates upon foreign goods in excess of available foreign exchange. Under these conditions a part of the home product must remain unsaleable in the national market and should be available for export. This of course does not automatically offer a solution to the dollar problem. As long as there are other soft-currency countries, and in England's case, countries with excess sterling balances, the goods may move to these regions most easily. Liquidation of foreign sterling balances is indeed like the liquidation of previous savings in the home country and constitutes a part of the inflated purchasing power.

The overall balance of purchasing power can therefore not be considered restored until the foreign inflationary gaps are also overcome; only then would a concentration of buying in the dollar area leave a surplus of commodities in the rest of the world. Such surpluses would certainly increase the pressure upon the producers to gain dollar markets, though price differentials and other obstacles might continue to prevent them from gaining access to the desired currencies. It is therefore not suggested that the dollar problem would solve itself as soon as the soft-currency countries close their inflationary gap; nevertheless, domestic monetary balance remains one of the prerequisites for the restoration of free foreign exchange and certainly has substantial bearing on the failure or success of devaluation.

Assuming that productive capacities are restored and the effects of war inflation sufficiently neutralized, there still remains the question whether the various national outputs can provide a balanced supply of commodities. The east-west division of the world has reduced the flow of agricultural products from eastern Europe into the more industrialized western countries. During the early postwar years, it appeared as if this situation left the western world on too slight an agricultural basis, thereby making the integration of the western economy impossible. Presently surpluses of wheat, corn, cotton, tobacco, and other crops began to accumulate and there is no longer any reason to assume that the western world cannot produce sufficient agricultural and other raw materials to keep its economy running. The European economies, however, require a greater percentage of these goods than formerly from the Western Hemisphere, and, if accounts are to balance, they must have the opportunity to sell more products in this direction. This raises serious problems because the greatest producer of agricultural surpluses, the United States, is at the same time the greatest and most diversified producer of industrial products. Until now the stream of commodities has moved mainly from the United States to Europe and it has yet to be proved whether the old industrial countries can develop

a strong westward flow of exports. In Europe, it is true, a division of labor existed not only between industrial and agricultural countries, but also, and to an even greater extent, among the industrial countries themselves. These, however, had developed together and continually adjusted their production to each other's requirements.

The adjustments to be made today are the more difficult because they cover a wide range of production. The United States will not buy enough cameras, watches, and toys to pay for European imports. Other European commodities vary more in style and quality from the American, and if European exports of these are to be raised, many industries will have to produce goods especially for the American consumer, which is more expensive and less satisfactory than mass production for a home market with only a small percentage of the same commodities being diverted to export channels. Concentration on vast exports of one or a few major goods, on the other hand, would force certain large American industries to retrench. This cannot be regarded as an imminent development. Nevertheless, if import and export conditions between the continents assume a more stable character, a gradual integration of production ought to be possible, for Europe's exports to the United States should not have to expand by more than 2 percent of the American commodity market. The level at which exports and imports will finally stabilize is, of course, yet to be found. Until now neither England nor the Continent has received a normal supply of food, and Germany's production has not yet developed its full demand for raw materials. On the other hand, a further improvement in production will enable the European countries to buy more from each other and to increase their trade with non-American parts of the world.

## II

The final question, and the one which we propose to discuss more fully than the preceding ones, is how European prices

compare with those of the United States. This raises a very important problem since moving commodities from countries of high prices to those of low prices is somewhat like pushing water uphill. Its solution, however, is not nearly so difficult as the restoration of production, its qualitative adjustment, and the liquidation of inflationary conditions. Adjustment of a disparity between two national price levels is a major task only if existing exchange rates are not to be altered. In that case, prices must be changed in terms of the respective national currencies, and since it is usually the country with the high price level that the shoe pinches, its prices must be reduced. England tried this experiment after the first world war in order to compensate for the overvaluation of her currency, and the effects were nearly as depressing as the world-wide price decline that began in 1929.

Devaluation has its drawbacks too and cannot be often repeated, but it is a simple and effective means of making the country's commodities less expensive in terms of a foreign currency, at least as long as prices in the devaluated country do not move up. England has chosen to devalue her currency by 30.5 percent, or in other words, to sell her pound sterling for \$2.80 instead of \$4.03, the old exchange rate. An English commodity which continues to sell for one pound will therefore cost only \$2.80 now or 30.5 percent less than before. While in this way English prices are reduced for holders of dollars, American prices are considerably raised for British buyers. They will henceforth obtain only \$2.80 for a pound and must therefore add almost another half pound to get the \$4.03 which the American commodity continues to cost.

At first glance, a 30.5-percent reduction of English prices in terms of dollars and a 44-percent rise of American prices in terms of pounds seems to imply a complete reversal of the trade relations between the two countries. Actually, the effects can be expected to be rather modest and to materialize only gradually. At the moment Europe has no great surpluses of commodities

with which to flood the American market nor can she drastically curtail her buying in the United States since she depends on our goods. Also, the terms of trade will not change as much as the percentages suggest. Britain devalued in order to earn more dollars. But if she sells every dollar's worth of export for 69.5 cents, she will have to sell 44 percent more commodities in order to earn as many dollars as in the past. Some of the established markets, however, are almost certain not to expand as much as 44 percent, with the result that England will sell perhaps only 20 or 30 percent more of these goods, thus earning in these markets fewer dollars than before. The demand for other commodities may be more elastic, but England may be unable to increase their supply by as much as 44 percent.

The British Board of Trade is aware of these possibilities and does not assume that the sterling quotations for British export goods will remain unaltered, thereby falling the full 30.5 percent in terms of dollars in every case. Indeed, it suggests that wherever the dollar market is assured but not easily expandable "it may well be appropriate for a number of exporters to raise their prices in terms of sterling so as to earn something like the same amount of dollars as previously."<sup>3</sup>

If the British government is afraid that a lowering of dollar prices will not always be to the country's advantage, the manufacturer with an established dollar market may be even more cautious, despite the fact that devaluation has supplied him with a considerable profit margin. Whereas in the past his government paid him about one pound for every four dollars he earned in the American market, in the future he will obtain for the same amount over 40 percent more in his national currency, that is to say, a pound and an extra eight shillings. This is the incentive granted him not only to maintain but to increase his exports to the United States. Exports, however, may be expandable only if the dollar price is reduced, that is, if the manufacturer forgoes at least part of the extra gain per unit of

<sup>3</sup> *Economist* (London), September 24, 1949, p. 683.

sale which devaluation has provided for him. From the standpoint of his total profits this is advisable as long as a cut in the profit margin is accompanied by a somewhat larger percentage increase in total sales. This stipulates an elasticity of demand greater than unity, which the government might accept as a minimum but which actually would fail to improve the country's dollar position.

Devaluation, of course, is not intended to serve only or even mainly the established exporters, but any producer who is a potential supplier of the American market. The new exchange rate offers all of them twenty-eight shillings for every four-dollar sale instead of the twenty, which for many producers may have been too little to cover their costs or may have been less than other markets were paying, thus discouraging sales to the United States. Since new exporters have no established high-priced dollar markets to lose, their only consideration is whether the new price provides an improvement over conditions in other markets. Any price above twenty shillings might do this and a price 10 to 30 or even 40 percent above the old one should indeed make exports to the United States attractive for a considerable range of British commodities. Total sales to the United States, of course, would still depend on conditions in the American market. Some price concessions will have to be made if exports are to be expanded, but new exporters can meet the American consumer part way, splitting the advantage of devaluation between themselves and the buyer while increasing their actual dollar earnings.

In general, the future terms of trade will obviously lie somewhere between unchanged dollar prices and quotations that reflect the devaluation fully, depending on the state of competition, government control, the elasticity of demand and supply, and last but not least, the effects of devaluation on the cost of production at home. For example, the dollar price of whisky, England's greatest single export item to the United States, may remain unaffected by devaluation for a long time. Since the

retail price in the United States is about four times England's export price, a reduction of the latter would probably have little effect on total sales and would only cause a loss in dollar earnings. The price of tin, which is controlled by the British Ministry of Supply, has been reduced in terms of dollars by about 8 percent, while the New York quotation for rubber is off by about 10 percent. The quotations for cocoa, burlap, and foreign wool at the beginning of November were about the same as before devaluation, though the pound prices for these commodities in the British market have not been advanced by the full 44 percent.

Automobiles are obviously expected to yield greater dollar earnings by means of reduced prices and a larger volume of sales. The New York retail prices for the small British cars have been reduced by about one-sixth, which is still considerably less than 30.5 percent, but it must be remembered that the retail price includes many dollar expenditures and markups which may not have fallen proportionately. Even so, devaluation has improved the position of the British manufacturers sufficiently to justify at least a new try for the American market. The American automobile market is large, of course, and ought to be elastic for any particular make. But the American industry is a giant compared with European production and leads in technical and stylistic developments; moreover, it enjoys a 10-percent protective tariff. Strong competition with the American producer can therefore not be expected from Britain. In the fourth quarter of 1948, England exported 8,645 cars to this country, but in the following quarter, imports fell to 707 automobiles. Even if she could raise her exports to the United States to 50,000 cars a year or 12 percent of her output, it would be equal to only 1 percent of the American market. Any further increase would have to be made at the expense of third markets, which England would not like to lose since she competes in them on more equal terms with the American product.

Textiles should provide England with a much better opportu-

nity for expanding her exports, though the effectiveness of devaluation in this case is reduced because imported raw materials constitute a significant percentage of the value of the finished product. Nevertheless, even cottons should benefit by devaluation to the extent of about 20 percent of the dollar price. Textile exports, however, have to hurdle a high tariff wall. Bleached cotton yarn and piece goods, for instance, carry duties of 25 and 30 percent ad valorem, respectively. If under these conditions a British producer buys American cotton for one hundred dollars and spins it into two hundred dollars' worth of yarn for re-export to the United States, it faces a tariff of fifty dollars though England's margin is only a hundred. For cotton cloth the ratio of tariff to British earnings may be lower, but can hardly be much less than 40 percent. Exports of British worsted and woollen goods may be expected to develop more favorably. Australian wool is available to British producers at lower prices than to the American since the United States maintains a considerable tariff, at least on finer wools and wool tops. In addition, Britain is known as a producer of the finest worsted clothes. But again tariffs of 35 percent or more prevent her from making bigger inroads into the American market. Devaluation may help to surmount some of these barriers, but big exports under such a heavy burden on Britain's industrial effort must remain an expensive proposition for the country.

Finally, the commodity gold may be mentioned, since it holds such a special position and is by no means a minor item of export from the sterling area to the United States. The devaluation has raised its price in pounds, thereby favoring particularly the South African mines, which have a production of more than 400 million dollars a year. The dollar supply of the sterling area, however, will be increased on this account only so far as a rise in the gold price leads to a greater production of gold. It would be different if the United States were to increase her gold price also, as is being suggested, but this would undo all the other effects of devaluation. An alternative would be to

invoke Article IV, Section 7, of the International Monetary Agreement which provides for a uniform change in the gold price of all member countries. Such a change would provide a further subsidy for the gold producers without disturbing the existing exchange ratios. But both proposals are so much at variance with common sense that they might better be rejected as rumors than considered imminent realities.

If devaluation does not radically change the terms of trade at the very beginning, it will be less likely to do so as time passes, since the cost of living and with it the wage costs in the devaluating country are bound to adjust themselves upward. Indeed, the cost of living in England could be expected to rise considerably if the government were not to use its influence to postpone and keep the increases at a minimum. As conditions are, only the directly affected commodities may go up in price and these only slowly. Rent, accounting for about 25 percent of living expenditures, can be frozen quite effectively. Transportation, electricity, government and personal services and goods that are almost completely home-produced may add up to another 25 percent of living costs that are not directly affected by devaluation. Food and clothing are the main items that will be affected by higher import prices. Even if they account for 50 percent of the cost of living, the raw materials involved will not amount to more than one-third of their retail price. Devaluation, therefore, directly affects only about one-sixth of all expenditures.

The same figure can also be derived from import statistics. England's imports are about equal to 20 percent of her national income. A part of these imports, however, are used for the manufacture of export goods, leaving a total for the home market that can hardly exceed 16.3 percent or one-sixth of the national income. If all import prices should rise 44 percent, an amount which would fully reflect devaluation, the cost of living should rise by a little more than 7 percent. During the first half of 1949, however, only 26 percent of Britain's imports came from the Western Hemisphere, while most other imports came from

countries which have devaluated their own currency substantially. The average increase in Britain's import prices will therefore be considerably less than 44 percent, probably not exceeding 25 percent. Since this increase will affect about one-sixth of the expenditure, the cost of living should go up only about 4 percent. Small as this increase may appear, it would be concentrated in the food and clothing expenditure, where it would be quite discernible. Since the government imports most of the critical items, it may choose to cover a part of the increased pound expenditures out of the budget, thus cutting the unconcealed increase in the cost of living to a still smaller percentage. Otherwise, if workers were to ask for a 4-percent increase in wages to compensate for rising costs, all prices would be likely to go up, because the home-produced goods would also become more expensive. Further wage increases would then be in order, and a 10-percent increase in the cost of Britain's home production could result in a comparatively short time.

Devaluation would nevertheless leave the country with a considerable improvement in her relative position, though increased wages and raw material costs may reduce the price margin achieved by devaluation to about 20 percent. Significant as such an improvement would be, it would do no more than restore the comparative conditions that existed between England and the United States in 1937, since the latter's export prices had meanwhile advanced by as much as 20 percent in terms of American wholesale prices.<sup>4</sup> Whether such a restoration of the prewar price relationship is sufficient to solve England's problem may be doubted. Before the war, England had a considerable investment income from abroad with which she could pay for a deficit in her balance of trade, whereas in the future she will have to rely exclusively on her exports of goods and services. But the problem is not so much the overall balance of her current accounts, which she has virtually accomplished, as the earning of a sufficient amount of dollars. And the size of this

<sup>4</sup> *International Financial Statistics* (September 1949) pp. 18-19.

problem depends mainly on the goal which is to be reached. For the first six months of 1949 England reported that the dollar gap of the sterling area was as large as 956 million dollars, while her drawings under the Marshall Plan amounted to only 664 million dollars, leaving a deficiency of 292 million dollars which had to be adjusted by a reduction in her gold and dollar holdings.<sup>5</sup> Is the aim to improve the current position of the sterling area by 956 million dollars in order to balance accounts without Marshall Plan aid or only to avoid the overdraft of 292 million dollars? The latter would, of course, reduce the problem considerably.

The same question arises for all countries. Total exports of the United States during the first eight months of 1949 amounted to 8.3 billion dollars, while her imports from all countries totaled only 4.3 billion,<sup>6</sup> necessarily leaving the rest of the world with a deficiency of 4 billion, or on an annual basis, as much as 6 billion dollars. Marshall Plan and other government aid will not reach this sum and the question again is whether the rest of the world should improve its balance of payments sufficiently to close the 6-billion-dollar gap or the comparatively small deficiency left after United States aid has been received. So long as the Marshall Plan is in operation, obviously the aim can only be to avoid the gap that exceeds the aid, for otherwise the United States would not be extending aid to the rest of the world. But what will happen in about two years when the Marshall Plan ends? Devaluation may provide a considerable premium for exports to the United States and make it more expensive to buy from her, but it is only reasonable to believe that it will fail to enable the European countries to overcome a five-billion-dollar deficiency by direct export to the United States in such a short period. Actually, it may not be necessary for Europe to attempt this Herculean task, even if American aid is terminated

<sup>5</sup> Cmd. 7793 (cited above) Table V. The pound was converted at the rate of four dollars.

<sup>6</sup> *Survey of Current Business* (October 1949) pp. S21-22.

as scheduled. The United States will probably give aid to other areas and will expand its Point Four program to invest three or four billion dollars in various parts of the world. Such investment would not provide Europe with dollars directly, but it would give the Continent additional opportunities to earn dollars in other countries. This would ease the problem, though it could hardly relieve the European countries of the necessity of sending an additional two or three billion dollars of industrial goods directly to the United States. The restoration of their productive capacities and the adjustment of their prices may help them in this task, but a final solution can probably be achieved only if a revision of American tariffs gives them an opportunity to compete for American dollars on a basis of greater equality. For many commodities such a revision could improve the competitive position of Europe by as much as the entire devaluation. It is understandable that the United States hesitates to review this question, but the present policy of price support for agricultural products, on the one hand, and of collecting tariffs from European labor, on the other, probably lays a greater restriction on the European standard of living than this country wants to maintain in the long run, particularly since a liberalization of our tariff policy would not necessarily affect our own standard of living unfavorably.

# FRANCE TODAY\*

BY SAUL K. PADOVER

## I

IN ANY consideration of France's relations with the outside world, two observations must be made at the outset: first, that she has ceased to be a major power; second, that she is keenly aware of it.

The plight of France is, of course, not confined to that country alone; it applies equally to all of Europe outside the Soviet Union. But France's awareness of her limited strength has a quality all its own, and is a factor in the total picture. One may say that the consciousness of being feeble adds to the feebleness. As a French newspaperman put it: "The difference between us and the British is that we are both weak, but *we* know it."

The visible decline of French power was sharp and painful. It occurred only recently—in the fateful June of 1940. And its painfulness has not yet worn off, for a great nation finds it hard to live comfortably with the thought that power has slipped from its hands. By power, of course, I mean control over policy-making decisions. In the vital matter of national security the French no longer have this power. For better or for worse, ultimate decisions affecting the international position of France, and perhaps her very life, are made not by Frenchmen in Paris but by Americans in Washington.

This amounts to a veritable revolution in international affairs. A century and a half ago France was the master of Europe. A century ago she was its most powerful state. A decade ago she was one of the half dozen major powers in the world. Today she cannot even hope to defend her own frontiers.

\* EDITORS' NOTE—Material for this paper was collected while the author was consultant for the research project, "The World Revolution of Our Time," at the Hoover Institute, Stanford University, and during his tenure as visiting professor at the Institut d'Études Politiques at the University of Paris in 1949.

The extent of the decline of France's power and prestige can be measured by what has happened to French as the language of international discourse. For nearly two and a half centuries French was the language of diplomats—the language in which international instruments were framed. The great international treaties—Rastadt in 1714, Paris in 1763, Vienna in 1814, Berlin in 1878, to mention but a few—were negotiated and drawn up in French. One recalls that at the Congress of Berlin in 1878 when Disraeli wanted to speak English, Bismarck insisted that he use French. Then came 1919 and 1945, two “victories” from which the French have not yet recovered. At Versailles, Wilson and Lloyd George knew little French, while Clemenceau spoke English; consequently the speech of the Anglo-Americans replaced the French language as an instrument of diplomacy, for the first time in generations. But the final mortification came at the San Francisco Conference of the United Nations in 1945, where only three official languages were originally provided for—English, Russian, and Spanish. French was ignored. It was not until Foreign Minister Bidault made a moving speech on behalf of his country's distinguished language that French was restored to a position at the international conference table.

The external diminution of power and prestige has its reflection in the internal situation. Here, again, we must go back to 1940 to understand the France of today. The depth and extent of the tragedy of 1940 can hardly be overemphasized. For 1940 was not just another military defeat; France, after all, had been defeated before, in 1815 and 1870 for example, without lasting damage. But 1940 was an entirely different kind of disaster. It was smashing defeat, plus humiliation, plus occupation, plus ruinous pillage and destruction, wholly unrelieved. France, in her swift collapse, did not even have the moral satisfaction of having fought heroically in self-defense. The terrible truth is that, with a few rare heroic exceptions, the great French armies simply disintegrated under the first blows of the Nazis.

To the French people the defeat came with a horrifying sud-

denness and completeness that left them dazed. The one thing Frenchmen had had confidence in was their army. For centuries this had been their security. France's history is, indeed, full of famous generals and of glorious deeds on a thousand battlefields. From the days, in 1106, when Guibert de Nogent wrote his *Gesta Dei per Francos*, a proud account of French heroism in the First Crusade, to 1934, when Charles de Gaulle wrote his *Vers l'armée de métier*, a brilliant analysis of modern warfare, the French people had had reason to trust the brains and leadership of their top military men. Whatever its faults, the army was the shield of the Republic, the defender of "liberty, fraternity, and equality"—values which themselves had been won in the blood of numerous battles.

The events of 1940 destroyed all this in one crushing blow. The French still do not know what hit them. Up to the very outbreak of World War II their leaders, politicians as well as generals, had assured them repeatedly that France had the best army in Europe, not to mention that most expensive of all covered ditches—the Maginot Line. Chief of Staff Gamelin kept on assuring Prime Minister Daladier that the army was ready; and Daladier assured the nation, which had no reason to doubt the solemn words of its leaders. Had not General Weygand, one of France's most famous living military men, said publicly two months before the war broke out, on July 5, 1939: "You ask my opinion of the French army and I will tell you frankly and in all truth. . . . I believe that the French army has a greater value than at any time in its history: it possesses materiel of first quality, fortifications of the first order, an excellent morale and a remarkable High Command. No one among us desires war, but I affirm that if we are forced to win a new victory, we will win it."

Six weeks after Hitler's Panzer divisions had moved across France's frontiers, there was no French army, there were no French fortifications, there was no French High Command. The lightning struck and demolished everything. France paid a terrible price for her defeat. Even the armistice failed to save

French men and materials. When France was liberated in 1944, it was found that the losses, especially in materials, were considerably greater than in World War I. As a result of German looting and requisitioning, and later Allied bombing and fighting, France lost 1.5 million dwellings, 78,000 farms, and 66,000 commercial buildings. The war and the bombings destroyed one-fourth of all locomotives, two-fifths of all motor vehicles, two-thirds of the freight cars, one-third of the merchant fleet, and five-sixths of the inland waterways and harbor facilities.

Even worse were the human losses and suffering: 1.5 million men were made prisoners of war; 1 million men, women, and children were deported for political or racial reasons; 5 million people were rendered homeless by the general destruction. And finally, there were the dead. Between 1940 and 1945 no less than 620,000 French people were killed. Among these were 160,000 military casualties and 360,000 civilians murdered by the Nazis. In roughly the same period the United States armed forces, including the navy and the marine corps, lost 314,094 men. In other words, French casualties were more than twice those of the United States, despite the fact that for more than four and a half years Americans fought in all parts of the world.

## II

What caused the disaster of 1940? This is a subject on which Frenchmen are deeply divided. On August 31, 1946, the National Assembly passed a law to set up a *Commission de Justice et de Législation* to inquire into the factors that had led to defeat.<sup>1</sup> The *Commission*, consisting of 60 deputies of the Assembly and 18 representatives of the Resistance and war veterans, held its first session on February 28, 1947, but so far there has been no report of its findings, if any.

<sup>1</sup> To inquire into "l'ensemble des événements politiques, économiques, diplomatiques et militaires qui, de 1933 à 1945, ont précédé, accompagné et suivi l'armistice, afin de déterminer les responsabilités encourues et de proposer, le cas échéant, des sanctions politiques et judiciaires." For the whole lengthy and somewhat bitter debate preceding this resolution, see *Journal officiel*, August 30, 1946.

It is significant that very little scholarly literature has been written on this sensitive theme. Historians and political scientists appear to be avoiding the study of what the martyred Professor Marc Bloch called "the strange defeat."<sup>2</sup> Perhaps they are afraid to lift the veil from the subject. There seems to reign in France a kind of silence about the "strange defeat" of 1940 because it is psychologically too disturbing and might lead to further national disunion. The topic, therefore, rarely comes up, even in private conversation, at least with strangers.

There is, of course, no lack of unorganized opinion, but it is confused and unsure. In June 1945, the *Sondage de l'Opinion Publique Française* polled the French on the question: "What, in your opinion, was the principal cause of the weakness of France in 1939?" The replies showed a bewildered national mind: 31 percent held that the French people themselves were responsible; 18 percent found the leaders guilty; 13 percent ascribed responsibility to politics in general; and the remainder cited treason, national disunity, the low birth rate, and a number of other causes. In answer to another questionnaire concerning the enfeeblement of France, 47 percent of the respondents held alcoholism responsible.

In all of these answers there is an element of truth. For France is a disunited country, and each group views the world from its own particular angle. In so far as there is any writing or public debate on the subject, the Left appears convinced that France was sold out by the fascists, and the Right seems equally certain that she was betrayed by the Communists. Socialists blame capitalism; Communists blame the generals; the generals blame the pacifists and the politicians; the politicians blame everybody but themselves. And where, among all these charges, does the real truth lie?

The facts would seem to be that, in 1940, the French generals

<sup>2</sup> M. Bloch, *L'Étrange défaite, témoignage écrit en 1940* (Paris 1946). Professor Bloch was murdered by the Nazis and his book was published posthumously. An English edition appeared in 1949.

were inept,<sup>3</sup> the army lukewarm, military materiel inadequate, public opinion unprepared, and certain elements among the ruling elite ready to sell France to the Nazi-fascists. There was, of course, some treason too, but that was minor compared to the general state of defeatism and demoralization.

This brings us to the heart of the question that is of immense concern to us and the rest of the world today. What led a great nation to the abyss of defeatism and demoralization?

Nazi propaganda between 1933 and 1939 obviously had a great deal to do with undermining French resistance; but propaganda, especially the divisive kind, is effective only where objective conditions are ripe for it. And France was ripe for it. For in 1940 France suffered from three major illnesses, which still prevail and which greatly influence her present international position. The three can be listed under the headings, *demography*, *class*, and *industrialization*.

*Demography.* An outstanding feature of modern France is her decreasing population. France virtually ceased to grow in the middle of the nineteenth century and became stationary in the twentieth. In 1901 there were some 40 million Frenchmen; in 1939, despite immigration, there were approximately 41 million.<sup>4</sup> World War I accelerated, if it did not actually cause, the catastrophic decline in population. France's casualties were proportionately higher than those of Germany or the United Kingdom. Between 1914 and 1918 France lost more than 1.3 million males, or 3.3 percent of the total population, whereas Germany lost only 3 percent and the United Kingdom 1.6 percent. In addition, another 700,000 Frenchmen were crippled. What was worse, the casualties occurred in the younger and fertile age group; 57 percent of those killed were under thirty-one.

<sup>3</sup> "La défaite de 1940 a son origine moins dans notre infériorité du moment en moyens matériel que dans une éclipse de la pensée militaire française . . .," wrote T. Albord in *Revue de défense nationale* (August-September 1947) p. 159.

<sup>4</sup> Since the end of World War II, however, the French birth rate has been rising. From 1945 to 1947, inclusive, the population had an absolute increase of 982,000. In 1948 the excess of births over deaths was 358,000. This may or may not be a temporary trend.

The bloodletting of World War I had a profound effect upon the whole French society. This mass killing of France's youth left not only what one French scientist called a "biologic hole" in the nation, but also deprived it of a reservoir of potential leaders, thinkers, and creators. Moreover, the nation aged biologically. In the period between the two world wars, France was a country where the youth decreased and the aged increased in numbers. In 1931, for example, for every 1,000 Frenchmen only 304 were under twenty, as compared with 400 in Holland, and 140 were over sixty, as compared with only 94 in Holland. This was a proportion that spelled a dangerous demographic decadence. Moreover, the relative decline in population was even more serious than the absolute figures would indicate. As a European power, France fell from second place in the nineteenth century to fifth place in our own time. Napoleon's France contained 15.2 percent of Europe's people; Daladier's only 8.8 percent. And in the same historic period France's neighbors, Germany and Italy, doubled their populations.

Thus, on the eve of World War II the French not only were weak but they felt weak. On the continent of Europe 40 million Frenchmen faced nearly 80 million hostile Germans and 45 million equally inimical Italians. The thought of renewed carnage such as that of Verdun was terrifying even to the most patriotic Frenchmen. This, in a subtle but all-pervasive way, added to the spirit of defeatism and undermined what will there was to fight.

*Class.* Defeatism was further intensified by the prevailing class divisions. French class consciousness and class conflict antedate by many years the organization of the Socialist and Communist parties. Class hatreds existed long before Karl Marx, as the French Revolution dramatically illustrated. Conflict between bourgeois and proletarian, between capitalist and worker, has been a constant factor in French life, either active or endemic. For a time, particularly in the nineteenth century, nationalism seemed to have bridged the wide gulf between the classes and to have united them on one issue—love for *la patrie*. But in our

own day, fascist agitation on the one hand and communist propaganda on the other have loosened the ties of patriotism.

Both sides, the rich and the poor, had fears and grievances. The moneyed people, remembering numerous revolutions and uprisings, and distrusting the workers, made no effort either to understand their needs or to improve their condition. Perhaps in no other major country in the world did capitalists have so little sense of social responsibility as in France. As a group they were characterized by selfishness and a narrowness of vision that made the term "bourgeois" an insult.

Labor, in turn, hated the wealthy, first, on general principles, and second, because it was not given a proper share in the good things of life. Although France was a political democracy and had an excellent free educational system, economic opportunities were so severely limited that the son of a laborer could hardly ever hope to rise far above the class into which he was born. The very concept of "equal opportunity" was nonexistent in France and, for that matter, still is. In 1948, for example, out of 200 graduates of the Polytechnique, France's greatest technical school which provides the country with its skilled leaders, only one was the son of a worker.

Until 1936-37, in such matters as progressive labor legislation and social security, France was one of the most backward countries in Europe. It is pleasant to record that today, as a result of the post-Liberation reforms, France's social security system is one of the most extensive and advanced in the world. But it came years too late. The Popular Front government had made efforts to improve conditions and bring France into line with other West European states, but the moneyed interests, led by the Banque de France, mobilized their formidable forces and broke the Blum cabinet. This shortsightedness on the part of the entrenched classes was, of course, not lost on France's politically intelligent workers.

Thus at the outbreak of World War II France was a house whose foundations were cracked from top to bottom by disunity.

The not inconsiderable French fascist movement, led by clever agitators like Jacques Doriot,<sup>5</sup> attacked the whole political system and helped to undermine France's international alliances by asking sneeringly, "Why die for Danzig?" At the other extreme were the Communists who, particularly after the Nazi-Soviet pact, preached both pacifism and defeatism. The Communist party slogan—until June 1941 when the Nazis invaded Russia—was "Why fight an imperialist war?" Extreme Right and extreme Left thus joined forces against the democratic Republic. Once the Germans had attacked the Soviet Union, however, the French workers threw themselves into the fight against the German occupiers of their own country. Their example was followed by other classes, until by 1943-44 France was really embattled. The Resistance became a formidable military threat to the Germans and their French collaborators, and in this Resistance the French nation, beaten and shamed, regained its soul and honor. As General Eisenhower remarked, the French fight superbly when they have something to fight for. From 1943 on, they fought with the traditional valor of the French people.

But a large section of the population never fought at all. These were the elements represented by the so-called Two Hundred Families and the numerous collaborationists and Vichyites who followed their lead. Among the spokesmen for these people was the *Comité de Forges*, which had intimate business dealings with the Nazi-fascists. This segment of the French people made no secret of its preference for Hitler and Mussolini as against Blum and the trade unions. And, incidentally, many a French general and admiral shared this view. Big business, in fact, provided Hitler with French ore for armaments. In 1936 France exported 8 million tons of ore to Germany; and when the Popular Front government, terrified by the rapid rise of fascism, tried to halt this trade, the *Comité de Forges* threatened to close the factories and start a panic. Premier Blum yielded and precious

<sup>5</sup> For the ideas of this group see Collection du Centurion, *La Trahison*, with a preface by Doriot (Paris 1942).

French metal continued to pour across the Rhine to produce the guns and munitions which were to destroy France and the rest of Europe. Indeed, the amount of exported ore kept on rising—it was 800,000 tons in the last month before the war.

*Industrialization.* In addition to the political divisions and social tensions, there was the question of France's comparative industrial backwardness. Despite considerable progress in industrialization in the twentieth century, and the growth of technology, the majority of the French people made their living in the fields rather than in shops or factories. The 1921 census, for instance, listed about 8.5 million persons in agricultural work and approximately 6 million in industrial occupations. This means that only 41 percent of the "active" population made its living in industry—compared with about 90 percent in Great Britain. As André Siegfried remarked, "The base of French society always remains peasant." And an essentially agricultural society cannot compete, especially in the hard field of modern warfare, with an industrialized one.

Moreover, French industry, though highly developed in certain sectors such as automobiles and farm machinery, suffered from relatively poor yield.<sup>6</sup> It was neither progressive nor efficient, at least in comparison with that of the United States or Germany. In no sense whatever was the French industrial system a match for Germany's gigantic manufacturing structure. To give just one example—on the eve of World War II, Germany had a steel-production capacity of about 30 million tons annually, while that of France was barely 5 million. When it came to machines and the tools of war, the French were thus hopelessly outclassed and never had a chance.

### III

With the coming of peace the French had to make a complete adjustment to the new realities. First, of course, it was necessary

<sup>6</sup> The Monnet Plan, to be realized by 1950, envisions an increase in industrial output of 25 percent over that of 1929.

to put the damaged house in order, materially speaking. This the French did with energy and success. They were generously aided by the United States, a fact which though not generally recognized by the French people, greatly hastened the country's recovery. Today France is virtually normal. Transportation and public services have been fully restored; factories are working and in some instances exceeding 1938 production rates; the shops are full of merchandise; and food is both plentiful and up to prewar standards.

The hardest adjustment has been in the field of international relations. Although associated with the victorious powers as a partner, France's basic weaknesses make it difficult for her to act as a real victor. Nevertheless, as a major European power, though sharply diminished in influence, France must come to grips with three fundamental problems with reference to the outside world: her policy toward the Soviet Union; her policy toward Germany; and her policy toward the United States. The first involves the question of domestic communism; the second, European union; and the third, national security and defense.

With regard to the Soviet Union, the French recognize it without hesitation as the dominant power in Europe. They treat Moscow politely and soberly, as befits a great nation. There is none of the hysteria and rage against Russia that prevails in other—more distant—lands. The French know that Russia, whether czarist or communist, is an integral part of the European state system, and so long as the Russians stay on their side of the fence, most Frenchmen do not get excited about the "red menace."

This relatively unruffled attitude toward the Soviet Union is, to a large extent, also determined by the existence of the French Communist party, one of the great political forces in France today. No less than one-fourth of the French electorate consistently votes the Communist party ticket. This does not mean that 25 percent of the French people are Communists. Far from it. But it does signify that a quarter of France likes the Communist party program and is not hostile to the Soviet Union.

Many noncommunist Frenchmen also vote as Communists out of an incurable kind of leftism, regardless of party label; and the Communist party is as far left as any Frenchman can go in protesting against existing conditions.

The Communist party has wide influence, among workers, among intellectuals, and even among farmers. It is the second strongest political party, and its members occupy many key positions in the trade unions and in the local governments. Communists also play a leading role in the formation of public opinion, for they are clever propagandists who devote much time to their trade. Directly or indirectly, their ideas and slogans and critical arguments penetrate numerous segments of the population, including the religious.

For this reason one does not see, in France, the spectacle of monsignors inciting the people to hate Communists or cardinals preaching a holy crusade against the Soviet Union. Indeed, the leading clergymen in France lean over backward in their desire to appear neutral. They regard the present cold war as a conflict between capitalism and communism—or, in other words, between the United States and the Soviet Union—and they make it clear that they wish to take no sides, since they consider both to be evil. This attitude is demonstrated in a remarkable letter made public by France's four cardinals<sup>7</sup> on September 8, 1949, from which the following passages are taken: "The Church refuses to join a 'Crusade' in which are intermixed so many temporal and economic rivalries and interests; it knows that by doing so it would compromise the purity of its mission which is essentially spiritual. . . . In condemning the action of the Communist parties the Church does not take the part of capitalism. It is necessary to know that there exists in the very idea of capitalism . . . a materialism rejected by Christian teaching. . . . We well under-

<sup>7</sup> Achilles Cardinal Liénart, Bishop of Lille; Pierre-Marie Cardinal Gerlier, Archbishop of Lyon; Jules Cardinal Saliège, Archbishop of Toulouse; Emile Cardinal Roques, Archbishop of Rennes. The letter was cited in the *New York Times*, September 15, 1949.

stand the sufferings that workers may have felt at the condemnation of Communism, in which they saw first of all a party resolved to suppress the social injustices from which they suffer. They should not believe that the Church is insensitive to their anguish and aspirations, because its priests share the troubles, worries and hopes of the world of labor."

Thus, France's policy toward Russia is softened, first by the sobering realization that the Soviet Union has many powerful allies and followers inside the country, and second by considerable sympathy with much that is good in the social program of communism. Despite her alliance with the United States and despite the Atlantic Pact, France is not hostile to the Soviet Union. General de Gaulle may make speeches to the effect that Stalin's Russia is a greater danger than Hitler's Germany ever was, but the majority of Frenchmen do not regard the Russians as their enemy.

As a matter of fact, they feel that there is an enemy much closer to home, on their very border. Having been invaded by the Germans three times within living memory, the French are in mortal fear of their neighbor across the Rhine. They know that Germany has nearly twice the population and four times the industrial capacity of France, and they dread the possibility that a revived Germany might try a fourth invasion, before which France would, once again, be helpless.

Indeed, French sentiment on the subject of Germany is almost morbid. Frenchmen in general cannot accept the fact that Germany is no longer a military menace. And they know, out of the depths of bitter experience, that the Germans are not, like themselves, a democratic people but one that is always ready to obey some leader or other.

For this reason, from the end of the war until quite recently, French policy toward Germany was consistently more severe than that of the other three occupying powers. Motivated by the desire to keep Germany economically weak and politically decentralized, the French insisted that the Ruhr be separated

from Germany and put under international control, and that any new German government set up under Allied auspices have its authority distributed among the component states, rather than concentrated in the central power, as was the case under the kaiser and under Hitler.

In these matters the French won a partial victory. The Ruhr has been put under international authority, to some extent, but it has not been cut off from Germany. The new Bonn government is federal and, to a degree, decentralized, though the chancellor still has great powers. But French policy suffered defeat in the economic field. No amount of French protest has sufficed to shake the Americans in their present determination to build up Germany economically, presumably, the French think, as a bulwark and arsenal against the Soviet Union. In this, the United States has been supported by Great Britain, for whose European politics there is a great deal of antipathy and even outright hostility in France.

But not long ago, the French stand on Germany began to change. The whole official tone suddenly became friendly, and leading Frenchmen held out the olive branch to the Germans. Last spring General de Gaulle surprised France with a public statement that the time had come "for a real understanding between the French people and the German people." A few weeks later General Koenig, military governor of the French zone in Germany, declared flatly, "Il faut nous entendre avec l'Allemagne," and in a subsequent interview remarked, "The interests of France and Germany are not divergent. . . . A rapprochement between them is necessary." Within the next few weeks France's civilian leaders likewise came out in favor of an understanding with Germany. Foreign Minister Schuman has been notably friendly toward the Germans, and has virtually promised them early membership in the Council of Europe at Strasbourg.

What caused the shift in policy was a growing realization of a new potential danger—the possibility that a recovered Germany might ally herself with the ambitious Russians. Should that

occur, the two nations would rule Europe between them and France would be through, even as a second-class power. As General Koenig expressed it with a candor that was more soldierly than diplomatic, "We must come to an understanding with Germany, lest Germany come to an understanding with others . . . at our expense."

A Franco-German agreement, however, would not be good politics in France. Public opinion would scarcely tolerate such a move now. At the same time, opinion is steadily shifting in favor of a project that might serve to eliminate Franco-German enmity and conflict—that is, a union of western Europe. Thoughtful Frenchmen realize that anti-Germanism, while emotionally satisfactory, is sterile as a policy, and moreover inherently dangerous. They have, therefore, come to the conclusion that peace and stability can be secured only in a Western Union and that within such a union even a strong Germany would no longer be a menace. Such a realistic policy must still overcome considerable emotional opposition within France, and to this end, one government spokesman urged that the people of France master their resentment and "regard the future resolutely."<sup>8</sup>

In the matter of France's attitude toward the United States, one must approach this subject on two levels, that of the government and that of public opinion. On the governmental level, France and the United States are, of course, friends and allies. More than that, French officials have been warm and genuine in their public praise of American aid, from Normandy to the Marshall Plan. Responsible Frenchmen know that without American assistance France would not have recovered so rapidly as she has and might perhaps have fallen victim to communism. Moreover, those who passionately believe in democracy and hate all dictatorship—the Socialists, for example—know that the French democracy exists today by virtue of American power and support; and they are naturally grateful. French democrats, particularly those of the Third Force that now make up the

<sup>8</sup> Statement made by Paul Devinat at Lure, France, on September 4, 1949.

coalition that rules the country, realize that the freedoms enjoyed by France would not last long if American power were either withdrawn or defeated.

But with regard to public opinion, the story is somewhat different. There can be no doubt that many Frenchmen view Americans with antagonism, to say the least. For this there are many reasons. One is plain ignorance. Most Frenchmen simply do not know or understand the United States. They form their mental picture of this country from certain novels and movies, and one can hardly blame them for having a low opinion of American civilization. Another reason is outright snobbishness. French intellectuals, brought up in an ancient and sophisticated culture, are inclined to consider Americans in much the same way Athenians looked upon the Romans. Still another reason is the behavior of certain types of Americans, both soldiers and tourists. Many GI's were rowdy and rude, especially toward women, and the memory of their misbehavior still lingers. There is a prevailing opinion that Americans have no manners.

Underlying all this, of course, is the question of national temperament. Psychologically the two countries are far apart. In France there is a feeling that the American way of life is inimical to the French. "Americanism," many Frenchmen believe, is the antithesis of what, for lack of a better word, we may call "Frenchism"—that is, a taste for plain living and the ability to relax. Furthermore, there is the matter of wealth. Americans are supposed to be rich, and the French, while they appreciate money, do not like those who possess it. It is a curious paradox, but observers agree that the practical-minded French simply do not like the rich.

Reinforcing and sharpening these biased attitudes is the constant stream of communist propaganda. The slogan-producing machine of the French Communist party is a mighty weapon in the cold war between the United States and the Soviet Union. Communist printing presses and speakers pour out clever phrases and arguments against American men, policies, and intentions.

*La guerre américaine* has become a standard phrase. Americans, even simple tourists, are referred to sneeringly as *milliardaires américains*. America is *le pays de coca-cola* and of gangsters. The Marshall Plan is an "instrument of war" against humanity. Wall Street, which is now supposed to rule America, is described as determined to take over the world.

Wild exaggeration? To be sure. But it is surprising to what extent this propaganda is successful. Even noncommunist Frenchmen accept many of the Communists' charges against the United States and, consciously or otherwise, repeat the pat slogans and arguments. In a public opinion poll of September 1947, only 18 percent of the persons who replied said that the Americans instituted the Marshall Plan out of a "sincere desire to aid Europe." Another 18 percent thought it was dictated out of a wish to meddle in European affairs, and 47 percent expressed the opinion that the Plan was the result of the American "need to find foreign markets." In essence, these are also the arguments of Communists everywhere.

What is the significance of all this? Let me stress again that France is a divided country with divided opinions. There exists an influential pro-American sector, probably the majority of the French nation, and a vocal anti-American minority. But on the underlying issue—the stark fear of war—nearly all Frenchmen are united. For this reason, the French are worried about American intentions. Most of them do not like the cold war with its overtones of hysteria and its antidemocratic manifestations. They have no control over American policy; they do not fully understand American aims; and they are terrified at the thought of being dragged into another shooting war. They know that such a war would be fought on their soil and over their homes and bodies. They do not feel that they could survive another liberation.

Summarizing, it can be said that the French today are profoundly anticapitalistic and antimilitaristic. (According to one poll, 43 percent of the French people are convinced that cap-

italism and big business are responsible for wars; 24 percent laid the blame on imperialism and ambitious politicians.) They are virtually disarmed—without an air force, without much of a navy, without a military industry—and they are neither able nor willing to build and maintain a strong fighting machine. The United States can, of course, pour arms into France, but Washington would be well advised to keep in mind one fundamental truth about the French—that they will fight only if their country is directly invaded. What large numbers of Frenchmen would really like is to remain neutral. In fact, last year the large Radical Socialist party passed a resolution to that effect, saying that in the growing “division of the world into two hostile blocs” France has no responsibility and that she “sought to limit her action to shielding herself from its effects.” But to be neutral a country must be strong, and the French are weak. Therefore they permit themselves to go along with American policy. But the spirit is not there. The prevailing sentiment is aversion to war, and so toward both the United States and Soviet Russia, the French attitude might well be expressed by “A plague o’ both your houses.”

## BOOK REVIEWS

*The New Science of Giambattista Vico.* [Translated by Thomas Goddard Bergin and Max Harold Fisch.] Ithaca: Cornell University Press. 1948. xv & 398 pp. \$5.

It is probably due to the growing interest in the philosophy of history that the Cornell University Press has ventured to publish the first complete translation of one of the greatest works in this field, which appeared in Italy two hundred years ago. The translation supplies only the text, without notes or introduction. The latter is contained in an earlier translation of Vico's autobiography, while a definitive commentary by F. Nicolini, supplementing Croce's *Bibliographia Vichiana* and his book, *The Philosophy of G. Vico*, translated by R. G. Collingwood, is forthcoming in Italy.

The translation of Vico's long and involved sentences, though always magnificent style, is as close to the original as English will permit—on occasion, perhaps, even too close and therefore difficult reading. But the foundation of a New Science was a difficult task, too, and if we take it for granted that there is such a thing as a "philosophy of history," it is a result of Vico's lifelong effort to establish the primacy of historical understanding in opposition to the new science of Descartes, that is, mathematical physics.

Vico's profound historical sense expresses itself at once in the first part of his study when he explains the "principles" of his science, for this word means to him not only principles in the abstract sense, as with Descartes, but also historical beginnings. The entire work is a search for the principles of humanity in the Homeric and pre-Homeric ages whose wisdom was creative and poetic, in contrast to the knowledge of rational ages which is sterile and sophisticated. The age of the gods is followed by the age of the heroes and that of man. Corresponding to these three ages are three kinds of languages (sacred, symbolic, and vulgar), of natural laws, of civil states, and of jurisprudence; all of these are in their historical-natural course informed by providence. This typical course of humanity is a progress in so far as it leads from anarchy to order and from savage and heroic customs to more rationalized and civilized ones. It is, however, a progression without a final fulfillment. The real end of it is decadence and fall, after which the whole course begins anew from a new barbarism, in a recurrence which is at the same time a resurgence. Such a recurrence occurred after the fall of Rome in the creative return of barbaric times in the Middle Ages. Whether a similar *ricorso* will occur at

the end of the present "barbarism of reflection," which is already a *ricorso*, remains for Vico an open question. But he expresses his thought in such a general language that it can be referred as well to the year 500 as to the year 2000. What he reviews in his work is the semicreative city of fallen men. It has no substantial relation to the City of God, except in its designation of the historical natural law of the course of nations as "providence." Vico's outlook is therefore, in principle, more classic than Christian. Like the ancients he is deeply concerned with origins and foundations and not with hope of, and faith in, a future fulfillment. History repeats itself, though on different levels and with modifications. Compared with Polybius' theory of cycles, however, Vico's *ricorso* is much more historicized, in conformity with his historicized notion of nature. The cyclic recurrence provides for the education and even salvation of mankind by the rebirth of his social nature. It saves man by preserving him. This alone, and not redemption, is the primary end and providential meaning of history. The recurrence of barbarism rescues mankind from civilized self-destruction.

Vico's work anticipates not only fundamental ideas of Herder and Hegel, Spengler and Toynbee, but also the more particular discoveries of Roman history by Niebuhr and Mommsen, the theory of Homer by Wolf, the interpretation of mythology by Bachofen, the reconstruction of ancient life through etymology, the historical understanding of laws by Savigny, of the ancient city by Fustel de Coulanges, and of the class struggles by Marx and Sorel. Vico was aware that he had accomplished something new and lasting, but in his own day he was scarcely known.

KARL LÖWITH

NELSON, LEONARD. *Socratic Method and Critical Philosophy: Selected Essays*. New Haven: Yale University Press. 1949. xii & 211 pp. \$3.75.

Translated from the writings of Leonard Nelson (1882-1927), this book brings to the American reading public knowledge of a master mind in German philosophy to whom may be applied the words of Christ, "A prophet is not without honor, save in his own country. . . ." It contains a foreword written by Brand Blanshard of Yale University and an introduction by one of the foremost students of Nelson, Julius Kraft of Washington and Jefferson College. Nelson's text consists of seven essays: "The Socratic Method" is the key piece, and following are "The Scientific and the Esthetic Conception of Nature," "The

World-View of Ethics and Religion," "The Art of Philosophizing," "The Critical Method and the Relation of Psychology to Philosophy," "Critical Philosophy and Mathematical Axiomatics," and "The Impossibility of the 'Theory of Knowledge'." From these titles it is apparent that Nelson's philosophical search embraced the whole range of the subject from mathematical axiomatics and philosophy of nature to the theory of knowledge, psychology, ethics, and the concepts of religion.

It would be an impossible task to describe here the salient points of these essays. The more so as they are mainly condensed lectures and addresses based on larger treatises which have either appeared in German or have never been published. It may be more appropriate to say something about the personality of Nelson, the reviewer having had the singular experience of working many years under his philosophical guidance. Indeed his personality gives the clue to the astonishing fact that while his influence on a small group of pupils was strong and powerful, his role in shaping official German philosophical opinion was almost nonexistent. His conviction that there is one and only one philosophical truth obtainable by thinking was heresy in a period imbued with irrationalism, skepticism, and mysticism. Furthermore, his endeavor to teach his students the art of philosophizing was squarely opposed to a dominant tendency in Germany—that philosophy must be taught as the history of philosophy. Nelson's uncompromising and relentless insistence that agnosticism and relativism will in the end destroy all spiritual values and lead to terrible disaster was regarded as a nuisance.

An additional reason for his having been neglected lies in the fact that he started from the psychological approach of J. F. Fries to Kant's *Critique of Pure Reason*. Fries's school of thought had fallen into oblivion a century ago under the crushing effect of the dominant mysticism of Fichte and Hegel.

Alvin Johnson has written, "Nelson comes nearer to Socrates as he actually was than any other modern—or ancient, for that matter." Nothing could be truer. Socrates' method is described in Plato's *Theatetus* as "a midwifery for the minds of men." This method of teaching pupils to think for themselves and to find the truth by such self-examination was fully adopted by Nelson for his own teaching. This was possible only because he shared with his Greek master the unshakable belief in the power of reason and utter contempt for unreasonable, worldly power. Both believed that a clear insight into the forces of evil and ignorance and their conquest by rational thought

would lead to a state of justice as the first goal of human civilization.

Although Nelson started with the study of science and mathematics and adopted the inscription over the door of Plato's lecture hall—*Medeis ageometretos eisito* (Who has not studied mathematics should keep away)—he shared Socrates' conviction of the unique importance of ethics. There is no contradiction in this. Nelson used the tool of axiomatics developed by his contemporary and fellow citizen in Göttingen, the great mathematician David Hilbert, for his own deduction of the ethical principles and the reformulation of Kant's categorical imperative.

There is no doubt that Nelson's analytical method had its greatest triumph in this scientific formulation of the principle of ethics. Since modern science has dethroned Newton's mechanics from the dominant role it played in the Kantian system, Nelson's approach to the problems of theoretical physics appears oversimplified. It must also be recognized that Fries's psychological deduction of the Kantian principles needs a reshaping on the basis of modern psychology; this task has never been undertaken.

Whatever these shortcomings may be, the following remarks of Blanshard should be heeded: "In urging that a self-critical reason can lay hold of principles that are more than tautologies, principles that yield important truth about values and about the nature of things, I believe that Nelson was on the right road. In view of the developments since his death, its exploration is needed all the more urgently." Indeed it is the hope of the editors that this English presentation of Nelson's philosophy will be not only a pastime for the reader who enjoys logical acuteness but also the spark for inquiring minds to continue the quest for truth with the exact tools which he forged.

*University of Pennsylvania*

OTTO MEYERHOF

CLARION, NICHOLAS. *Le Glacis soviétique*. Paris: Aimery Somogy. 1948. 279 pp. 270 francs.

HERTZ, FREDERICK. *The Economic Problem of the Danubian States: A Study in Economic Nationalism*. London: Victor Gollancz. 1947. 223 pp. 15 shillings. [American representative, Transatlantic Arts; \$4.50.]

Clarion's analysis of the relations between Russia and the satellite countries presents the Soviet system as being based on two "contradictory" principles, one of which is socialistic — concentration of property in the hands of the government which directs its utilization — and the

other is "bourgeois" — increasing inequality in the distribution of the national income, a top-heavy bureaucracy daily rising higher above the masses, and chauvinism. These latter characteristics cannot be adequately defined as "bourgeois," and we may well ask why a large bureaucracy should be considered a contradiction to socialism. Indeed, these conflicting principles do not create the problem that Clarion rightly describes as the Politbureau's main concern: the need to establish a kind of equilibrium between workers and peasants, between the party and the police, between the bureaucracy and the army. The governing group puts its decisive weight in the balance for or against one of the other of these "classes" as events dictate. These shifts are sometimes performed smoothly, but generally they take the form of extensive and even violent purges.

But the principle subject of Clarion's book is the description of the tensions existing in the satellite countries and between them and the Soviet Union. Russia's domination is achieved by prefabricated revolutions that establish communist oligarchies; these wield absolute power within their own countries but are absolutely dependent on the Politbureau in Moscow. The tendency of the Politbureau to abolish private property in these regions encounters the resistance of the peasants who cling to their holdings. Ceiling prices on agricultural products and requisitioning of supplies bring the peasants into opposition with the towns and the administration. In China, the communists were even obliged to make compromises with the local feudal landlords, who consented to reduce rents to 37 percent of the harvest if the communists would guarantee the payment of the rents.

Industries were widely nationalized in the Soviet sphere. Since great numbers of former industrialists emigrated or were expelled, the governments have had to select new managers who are supposed to operate plants on "commercial principles." But many nationalized industries lose money and suffer from lack of capital. And the oversized governmental machinery absorbs a great part of the national income. In such circumstances, where can the capital necessary for ambitious industrial developments be found? The workers adhere in principle to the nationalization of industries, but they are dissatisfied with their standard of living which is lower than before the war; they are trying to reestablish their trade unions and their right to strike, and bitterly resent the strait jacket forced on them by the police. The Politbureau and its satellite annexes counter this opposition by destroying the peasant parties and organizations of social-democrats, whom they call "social-fascists," killing or arresting the leaders that have not made the

Soviets popular with the masses. And the Politbureau, well aware of the divergence between communist and Russian interests, has in many cases prohibited the nationalization of industries in order to retain their war booty and get reparations. They acquired 30 percent of the industries in Germany's Russian Zone and 50 percent of the mixed corporations in the countries of the Soviet bloc. Thus, for the first time in history, Russia has big foreign investments. Though the Soviet Union can export only few capital goods to her neighbors, she opposes their efforts to recover their western trade and to get foreign credits.

Such political and economic overlordship provokes opposition from the people and sometimes even the communist governments. Yet, despite Tito's heresy, the satellites know that they cannot maintain themselves without the Politbureau's backing and they therefore have to bear the heavy Soviet mortgages. Resentment is deep and widespread. Though the German communists agree to Soviet reparations and expropriations of German plants, they are against the internationalization of the Ruhr which Russia demands; also, they resent the Oder-Neisse frontier set by the Soviets and the expulsion of many millions of Germans. Millions of Poles have also had to leave their homes. Czechoslovakia quarrels with Poland and Hungary about their frontiers, and Yugoslavia with Bulgaria, Italy, and Austria. Attempts of the satellites to form customs unions or federations have been vetoed by Russia. Thus, Clarion's conclusion is that conditions within these countries and their relations with the Soviet government are strained by many tensions and far from being stable.

Frederick Hertz's book investigates the national income of the Danubian successor states of Austria-Hungary, which after some years of independence were first "integrated" into the Nazi system, and then into the Soviet system. The author has collected all the available statistical material; he uses it with ability and objectivity, and he knows conditions and developments in the Danubian countries from life-long experience. His results offer convincing proof that between 1902 and 1913 national income in Austria-Hungary increased substantially, while after 1918 it declined in the successor states, where heavy unemployment was the most striking symptom of economic disorganization. The Danubian countries lost the great internal market, the natural division of labor among the various parts, the sound currency and credit of the old Empire.

The methods which Hertz applies and the figures at which he arrives imply the large margins of error common to national income estimates. But he has taken great care to check his figures by comparisons of the

quantities of production with the volume of consumption and investment. These studies are valuable in themselves, and for the picture they give of economic movements in the Danubian countries. They support the author's thesis that the effects of economic nationalism were exceedingly detrimental to these countries, "paved the way for Hitler," and therefore constituted one of the causes of the second world war.

RICHARD SCHÜLLER

BOORSTIN, DANIEL J. *The Lost World of Thomas Jefferson*. New York: Henry Holt. 1948. xii & 306 pp. \$4.

This volume differs from many of the recent studies on Jefferson in attempting "to recapture the Jeffersonian world of ideas" and "to see the relation among their conceptions of God, nature, equality, toleration, education and government" as a theoretical system. Dr. Boorstin, author of *The Mysterious Science of the Law*, a parallel study of Blackstone's philosophy, is not here concerned with the sources or practical applications of Jefferson's views. For light on these matters, one must turn to the works of Henry Adams, Charles Beard, Carl Becker, Gilbert Chinard, Fiske and Marie Kimball, Dumas Malone and others.

The student of intellectual history will find in Dr. Boorstin's book much scholarly research and considerable clarity, sprightliness, and ingenuity in exposition and interpretation. He may detect the influence of Becker's *The Heavenly City of the Eighteenth-Century Philosophers*, but this will not detract from his enjoyment of Dr. Boorstin's companion piece for late eighteenth and early nineteenth-century American philosophers, centered on key members of the American Philosophical Society in Philadelphia. Dr. Boorstin ably expounds the ideas and achievements of such figures as David Rittenhouse, the greatest American astronomer of that period; Benjamin Rush, physician, pioneer in psychiatry, humanitarian; Joseph Priestley, the great English chemist and nonconformist theologian; Benjamin Smith Barton, leading American botanist of his time; Charles Willson Peale, artist and artisan; and Thomas Paine, an admirer of and contributor to the American Philosophical Society, but not a member. This group Dr. Boorstin has christened the Jeffersonian Circle, because in his eyes Thomas Jefferson "stood at the center of this philosophical community" and "was the human magnet who drew them together and gave order and meaning to their discrete investigations" (p. 23).

The author assumes a fundamental and unchanging harmony in

world and social outlook among the members of this circle, and devotes the major part of his volume to presenting and examining critically their preconceptions and avowed beliefs in God as "the supreme workman," the equality of man, the nature of thought and morals, the political, legal, and educational bases for the new society being created in America. He shows a rare skill in weaving together quotations from widely scattered works by this group to build up a composite intellectual portrait.

But after one credits Dr. Boorstin with industry and artistry, one must, in all fairness, point out his grave shortcomings. The Jeffersonian Circle treated in this book undeniably formed an important sector of Jefferson's intimate philosophical correspondents and friends. But in failing to include James Madison, John Adams, Thomas Cooper, and William Short, among others, Dr. Boorstin reveals the unsoundness of his criterion of choice. Madison was Jefferson's strongest political ally and heir; Adams, Cooper, and Short were among the chosen few to whom Jefferson fully revealed his thoughts. Moreover, during earlier periods in Jefferson's life, other circles were equally important. The author's method also creates an incorrect impression of almost complete agreement and fixity of opinion among the Jeffersonians, whereas actually important differences of opinion existed among them, and between Jefferson and most of the Circle, on various subjects, such as the reality of biologic classes and species. Finally, one may seriously question whether the American Philosophical Society centered on Jefferson and was dependent upon him for inspiration and guidance, as Dr. Boorstin asserts.

Professor Boorstin views the Jeffersonian Circle as a predominantly pioneer-minded group in a frontier society, instead of focusing on the fact that these men lived in the long-settled Atlantic coast region and were the heirs of a vigorous colonial and English culture, as well as cocreators of an emergent national culture. Hence, he overemphasizes the admittedly dominant utilitarian aims of the Jeffersonians, and mislabels them narrow forerunners of pragmatism. Abhorring Jefferson's materialism, empiricism, and utilitarianism, Dr. Boorstin fails to do justice to Jefferson's careful study and personal integration of the teachings of the English empiricists, Bacon and Locke, the Scottish realist, Dugald Stewart, and the French positivistic materialists, Destutt de Tracy and Cabanis. Had he less reverence for traditional metaphysics and had he taken equal pains to master the doctrines of modern naturalism, empiricism, and pragmatism, he would not have misjudged the validity of many of

Jefferson's philosophical positions. He would then have been able to translate them into the contemporary idiom and to appreciate their validity. Such balanced and just appraisals may be found in John Dewey's incisive introduction to *The Living Thoughts of Thomas Jefferson*, Horace Kallen's brilliant essay, "The Arts and Thomas Jefferson" (*Ethics*, July 1943), and two able dissertations, Adrienne Koch's *The Philosophy of Thomas Jefferson* and Eleanor Berman's *Thomas Jefferson Among the Arts*. Also, Karl Lehmann's *Thomas Jefferson: American Humanist* offers evidence that refutes Professor Boorstin's charge that the Jeffersonian had a "strong sense of separation from the past" and found it hard to comprehend the "very idea of traditions and institutions" (pp. 204, 169).

There are many other points in Professor Boorstin's account of Jefferson's philosophy, science, and politics to which this reviewer takes exception, but which cannot be gone into here. Perhaps the greatest service this volume renders, aside from its contributions on the American Philosophical Society, is its revelation of Jefferson's thought as seen by a champion of supernaturalism, a priori metaphysics, and law as revealed truth or ancient communal custom. In any case, the critical reader will be inspired to go back to Jefferson's own writings and will discover how powerful, fresh, and sound most of them still are.

SIDNEY RATNER

*Rutgers University*

ROSE, ARNOLD, and CAROLINE ROSE. *America Divided: Minority Group Relations in the United States*. New York: Alfred A. Knopf. 1949. xi & 342 pp. \$4.

*America Divided* is another study of prejudice against racial, religious, and national subgroups in the United States, written, apparently, for the layman. In the words of the authors, "The first eight chapters are intended to be descriptive; the last three analytic." A chapter of definition is followed by a hasty historical survey of prejudice and descriptive sketches of minority groups' position in the economic, legal, political, and social spheres of American life. Then come the inevitable discussions of the minority group community and of the biological aspects of race. Concluding chapters survey existing theories of prejudice and venture predictions of future events.

"Because ceremonial prejudices . . . would hardly create problems," the book focuses upon prejudice as the "attitude of hatred" and consequent "manifestations of discrimination." Such simple chaining

of prejudice to hate is hardly tenable. Too many important aspects of prejudice which have other roots would, by definition, have to be neglected. Indeed, the authors themselves change from this too raw-boned horse in the middle of the stream. We find, for instance, mention of discrimination of the "gentlemanly" kind (p. 152). And we are told that "the emotions attending social discrimination—and there are always emotions attending it, unlike other forms of discrimination—appear to be *fear* and *disgust*, or both" (p. 153). From this exposition we gather, contrary to definition, that much discrimination is *unattended* by emotion and that *social* discrimination is attended by fear and disgust. The horse of hatred is indeed left unriden.

In other instances, the authors appear to have made questionable generalizations. We must at least question such statements as "... economic discrimination may be thought of as the most important obstacle created by prejudice" (p. 14) and "Most of the nineteenth-century and early twentieth-century wars, imperialistic expansions, and exploitations of one people by another have at least one of their major roots in racism" (pp. 24-25). The single-minded pursuit of such themes could preclude any consideration of prejudice as a social obstacle erected in the process of pathologically acute economic competition. And even a non-Marxist might ask whether racism might not have been a rationalization to justify economic, imperialistic expansion rather than a basic cause of such expansion. This avoidance of coming to grips with the relationship between western economic institutions and prejudice is one of the least happy aspects of the book. Moreover, in *America Divided* an otherwise acceptable description of minority group disabilities is marred by the overuse of such indefinites as "some," "many," "generally," "probably," "to a certain extent." Too often the authors "hazard a guess" (p. 247) when more careful scholarship might have been able to state a fact. Too often, as the authors themselves admit, their "presentation has had to be descriptive and impressionistic rather than analytic and comprehensive" (p. 219).

When there is conceptualization, it too often takes a dubious turn. For example, the following statements: "Nevertheless, there may be some personality traits which characterize Jews more than other groups. Although this is a purely subjective judgment, the authors feel that one of the most striking personality peculiarities of Jews can be characterized as 'intensity'" (p. 252). In this case, the authors might better, subjectively, judge again. In our modern American social

world, where the goals of our society dictate a tense striving for prestige, status, position, and power, it seems to be a stereotype to judge Jews to be "peculiarly" intense.

To say all this is not to say that this book will be of no value to the layman. Not the least valuable of its contributions is the authors' cognizance of the danger of a rebirth, in the United States, of Protestant-Catholic antipathies. Yet even here we must question the statement that "the leading Protestant churches had never sought to take members away from other churches" (p. 55). However, the authors have pointed up in their discussion what may become a pressing American problem.

The bibliography, too, will be welcome to the intelligent layman who wants to investigate the subject further.

We regret that the book was not more precise and sustained. Even a team, when it tilts with prejudice, needs the sharpest lances.

KENNETH T. SKELTON

*Briarcliff Junior College*

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 HANS STAUDINGER (Vice-Chairman, Graduate Faculty; Chairman, Research Council, Institute of World Affairs)—economics, business administration.  
 ARTHUR L. SWIFT (Visiting Professor)—social psychology.  
 HOWARD B. WHITE—political science.  
 FRIEDA WUNDERLICH—economics, labor problems.  
 JULIUS WYLER—economics, statistics.

\* On leave of absence.

66 WEST TWELFTH STREET

NEW YORK 11, N. Y.



